IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2.3.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

W.P.Nos.17195 & 17196 of 1998, 19750 & 19751 of 1999, 2926 to 2928, 2930, 5390, 5913 to 5915, 6903, 7476, 15858 & 7613 of 2000
and
WPMP Nos.26031 & 26033 of 1998, 21327 & 21329 of 1999, 28990 & 28992 of 1999, 4516, 4518, 4520, 4524, 8153, 8905, 8907, 8909, 10294, 11050, 22997, 22998 of 2000, 6965 of 2001 , WPMP.18576/2006
and
WVMP No.645 of 2002

M/s. Ramgopal Estates Pvt. Ltd.
Rep. by Managing Director
MR. K.S.Hemanth Kumar .. Petitioner in W.Ps. 17195 and 17196/98

Vs.

1. The State of Tamil Nadu
   rep. by Commissioner & Secretary
   to Government, Industries Department
   Fort St. George, Chennai 600 009.

2. The Special Tahsildar (Land Acquisition)
   Petro Chemical Park
   TIDCO, 485, Anna Salai
   Nandanam, Chennai 600 035. ... Respondents in W.Ps.17195 & 17196/98

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To issue a writ of certiorari calling for the records pertaining to the notification under Sec 4 (1) of the Land Acquisition Act made in G.O.Ms.No.232 & 234 respectively Industries (MID-II) 18th June 1998 published in T.N.Government Gazette on 22.6.1998 in so far as the petitioner's land is concerned in survey No.7/1 & 1/5 measuring 48.56.5 hectares 51.49.5 hectares respectively in Kattupalli Village, Ponneri Taluk, Tiruvallur District in W.P.Nos.17195 and 17196/98.

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1. K.B. Basker
2. K.B. Chandramouli ... Petitioners in WPs.19750 /99

1. K.B. Jaishankar
2. K.B. Ramesh ... Petitioners in W.P.19751/99

1. State of T.N. rep by Secretary
to Government
Industries Department,
Fort St. George, Chennai-9.

2. The Special Tahsildar (L.A)
Unit 7 TIDCO
(Petro Chemical park, Ponneri)
M.T.P. Buildings, Anna Salai,
Nandanam, Chennai- 35.

3. The Managing Director
State Industries Promotion
Corporation of T.N. Limited,
19, A.R.L. Road,
Egmore, Chennai-8. ... Respondents in W.Ps.19750 & 19751/99, 15858/2000 RR1 and 3 in W.P.7613/2000

to issue a writ f certiorarified Mandamus or direction by calling for the records relating to impugned notification under Sec 4 (1) of the land Acquisition Act in G.O.Ms.No.231 & 216 respectively Industries MID II dated 18.6.98 published in T.N. Government Gazette Extra Ordinary No.3421 in part II Sec 2 of 22.6.98 on the file of the first respondent and to quash the said notification and Sec 6 declaration in G.O.Ms.No.455 & 454 respectively Industries MID II dated 8.6.99 published in T.N. Government Gazette Extra ordinary No.463 dated 8.6.99 on the file of the first respondent and to direct the first respondent to withdraw from the acquisition of the lands comprised in S.No.7/2B & S.No.7/2A respectively of an extent of 26.5.8.00 & 27.76.00 hectares respectively hectares and S.No.331/2B S.No.331/2A respectively of an extent of 0.27.00 hectares & 0.23.05 hectares respectively of total extent of lands of 26.85.00 hectares and 27.99.05 hectares respectively situated at Kattupalli Village and Ponneri Taluk Tiruvallur District in favour of the petitioners in W.P.19750/99 & W.P.19751/99.

1. J. Ponraj S/o. Jayaraj ...Petitioner in W.P.2926 of 2000
2. S.Arumugham ...Petitioner in w.P.2927 /2000
3. S. Rajendran ...Petitioner in W.P.2928/2000
4. S. Gajendran ...Petitioner in W.P.2930/2000

Vs

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1. The Government of T.N. rep by the Secretary
to Government Industries (MID II)
Department , Fort Saint George, Chennai-9.

2. The Spl. Tahsildar (Land Acquisition)
Unit 9, Petro Chemical Park, TIDCO
No.485, MTP Buildings,
Anna Salai, Nandanam, Chennai-35. Respondents in WPs.2926 to 2928 & 293/2000.

To issue a writ of ceriorarified Mandamus calling for the records pertaining to the notification issued by the first respondent under Sec 4(1) of the Land Acquisition Act in G.O.Ms.No.810, 752, 752, 752 Industries (MID II) dated 12.11.99, 7.10.99, 7.10.99, 7.10.99, published in the Government Gazette dated 12.11.99, 11.10.99, 11.10.99, 11.10.99 and declaration issued by the first respondent under Section 6 of the land Acquisition Act in G.O.Ms.No.6, 935, 935, 935 Industries (MID II) dated 7.1.2000, 13.12.99, 13.12.99, 13.12.99 published in the Government Gazette dated 7.1.2000, 13.12.99, 13.12.99 , 13.12.99 and quash the 4 (1) Notification dated 12.11.99, 7.10.99,7.10.99, 7.10.99 and 6 Declaration dated Nil 13.12.99, 13.12.99, 13.12.99 in so far as the petitioner's lands are concerned and consequently direct the respondents to delete the petitioner land situate in S.No.101/2B2 & 101/3 of 91; 70/2,71/1, 71/2, 72 and 88/3 of 91; 70/2, 71/1,71/2, 72 and 88/3 of 91; 70/2, 71/1, 71/2, 72 and 88/3 of 91 Kattupalli Village Ponneri Taluk, Tiruvallur District from the proposed cquisition in abovesaid (WPs 2926/00 to 2928/00, 2930/00).

1. Indirani
W/o. Ramanatha Mudaliar

2. Baskaran @ G. Yoganandam
S/o.Gajarajan Mudaliar,

3. G. Krishnakumar
S/o. Gajarajan Mudaliar Petitioner in W.Ps.5390/2000, 5913 to 5915/2000

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Vs

1. State of TN rep by Secretary to Government
Industries Department
Fort Saint George, Chennai-9.

2. The Special Tahsildar (L.A)

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Unit TIDCO, (Petroleum park Ponneri)
M.T.P. Building, Anna Salai, Nandanam
Chennai- 35.

3. The M.D. T.N. Industrial Development
Corporation Ltd., 19, ARL Road,
Egmore, Chennai-8. ...Respondents in Wps 5390/2000, 5913 to 5915/2000, 6903/2000

To issue a writ of certiorarified Mandamus or direction by calling for the records relating in impugned notification under Sec 4 (1) in G.O.Ms.No.810 Industires (MID II) dated 12.11.99 was publised in T.N. Government Gazette extra ordinary No.849 in Part II Sec. 2 on 12.11.99 on the file of the first respondent and notification under Sec 6 declaration issued in G.O.Ms.No.6 Industries (MID II) dated 7.1.2000 was publised in T.N. Government Gazette Extra ordinary No.14 in part II Sec 2 on 7.1.2000 on the file of the first respondent to withdraw from the Acquisition of the lands comprised 0.22.0 hectares in S.No.95/2A (2) 0.07.0 hectares in S.No. 98/2 and (3) 0.04.5 hectares of wets land in S.No.114/1 of total extent of 0.33.5 hectares situated at Kattupalli Village in Ponneri Taluk, Tiruvallur District in W.P.5390/2000.

To issue a writ of certiorarified Mandamus calling for the records relating to impugned notification under section 4(1) notification in G.O. Ms. 754 Industries (MID II) dated 7.10.1999 published in T. N. Govt Gazette Extraordinary No. 778 in part II section 2 on 11.10.1999 on the file of the first respondent and notification under section 6 declaration issued in G.O.Ms.941 Industries (MID II) dated 13.12.1999 published in T.N. Govt Gazette Extra ordinary No. 932 in part II section 2 on 13.12.1999 on the file of the first respondent and quash the same and to direct the first respondent to withdraw from the acquisition of the lands measuring 0.04.0 hectares in S.No. 159/2 of wet land situated at Katupallivillage in Ponneri Taluk, Tiruvallur District in favour of the petitioners in WP.5913/2000.

To issue a writ of certiorarified Mandamus calling for the records relating to impugned notification under section 4(1) in G.O. Ms. 766 Industries (MID II) dated 8.10.1999 published in T. N. Govt Gazette Extra ordinary No. 779 in part II section 2 on 12.10.1999 on the file of the first respondent and notification under section 6 declaration issued in G.O.Ms.990 Industries (MID II) dated 27.12.1999 published in T.N. Govt Gazette Extra ordinary No. 970 in part II section 2 on 27.12.1999 on the file of the first respondent ans quash the same and to direct the first respondent to withdraw from the acquisition of the lands comprised (1) S.No. 4/2A1 of an extent of 2.43.0 hecares

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(ii)S.NO.4/2A3 Of an Extent of 2.42.0 hectares and total extent of lands of 7.85.0 hectares situated at Kalanji Village, in Ponneri Taluk, Tiruvallur District in favour of the petitioners in WP.5914/2000.

To issue a writ of certiorarified Mandamus calling for the records relating to impugned notification under section 4(1) notification in G.O. Ms. 752 Industries (MID II) dated 7.10.1999 published in T.N. Govt Gazette Extraordinary No. 778 in part II section 2 on 11.10.1999 on the file of the first respondent and notification under section 6 declaration issued in G.O.Ms.935 Industries (MID II) dated 13.12.1999 published in T.N. Govt Gazette Extra ordinary No. 932 in part II section 2 on 13.12.1999 on the file of the first respondent to withdraw from the acquisition of the wet land measuring 0.16.5 hectares in S.No.91/2A of dry land situated at Kattupalli Village in Ponneri Taluk, Tiruvallur District in WP.5915/2000.

1. G.Yoganandam
S/O. Gajarajan Mudaliar

2. G.Krishnakumar
S/O. Gajarajan Mudaliar Petitioners in WP.6903/2000

vs

To issue a writ of certiorarified Mandamus or calling for the records relating to impugned notification under section 4(1) notification in G.O.Ms.709 Industries (MID - II) dated 26.10.98 was published in Tamil Nadu Government Gazette No.616 Extraordinary in part II Sec.2 on 28.10.98 on the file of the first respondent and notification under Sec.6 declaration in G.O.Ms.8 Industries (MID II) dated 11.01.1999 published in Tamil Nadu Government Gazette Extraordinary No.27 in part II Sec.2 on 12.01.1999 on the file of the first respondent to quash the same and to direct the 1st respondent to withdraw from the acquisition of the lands measuring 4.21.0 hectares in S.No.1/1D2 and measuring 3.88.5 hecatares in S.No.8/1B of dry land situated at Puzhuthivakkam Village in ponneri Taluk, Tiruvallur District in favour of the petitioners in WP.6903/2000

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1. Tmt. C.Kumuda
2. Tmt. R.Thuljarani
3 Dr.(Tmt) W.K.Vindhyarani
4. K. Venkatakrishnan
5. Tmt. Lakshmimohan
6. Selvi K.Gowri
7. R.K.Surendar Petitioners in WP.7476/2000

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vs

1. The State of Tamil Nadu
rep. by Secretary to Government
Industries (MID II) Department
FSG, Chennai -9.

2. The Special Tahsildar (LA)
Unit 15, Petrochemical Park
TIDCO, 485, MTP Building
Anna Salai, Chennai - 35. Respondents in WP.7476/2000

M/S.Anand Transports
rep. by its Partner
M.G.M.Maran Petitioner in WP.15858/2000

Jesu Rathinam
Convenor,
Coastal Action Network Petitioner in WP.7613/2000

Vs

1. State of T.N. rep by Secretary
to Government
Industries Department,
Fort St. George, Chennai-9.

2. The Department of Environment and Forests
by its Secretary, Fort St.George, Chennai -9.

3. The Managing Director
State Industries Promotion
Corporation of T.N. Limited,
19, A.R.L. Road,
Egmore, Chennai-8.

4. Union of India,
rep. by Ministry of Environment and Forests
New Delhi

5. The Commissioner
Department of Fisheris
DMS Compound, Teynampet,
Chennai - 6.

6. The Tamil Nadu Pollution Control Board,
rep. by its Chairman,
100, Anna Salai,
Guindy, Chennai. Respondents No.2,4,5 & 6 in WP.7613/2000

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To issue a Writ of Certiorarified Mandamus calling for the records pertaining to the notification issued by the 1st Respondent under Sec.4(1) of the land acquisition Act G.O.Ms.No.235 Industries MID II cated 18.05.98 published in Tamil Nadu Government Gazettee Extra Ordinary No.342 in Part II Sec. 2 on 22.06.98 on the file of the first respondent and sec.6 declaration in G.O.Ms.No.451 Industries MID II dated 08.06.99 on the file of the first respondent and published in Tamil Nadu Government Gazette Extraordinary No.463 in Part II Sec.2 on 08.06.99 and to quash the same and to direct the first respondent to withdraw from the acquisition the lands comprised in S.No7/3A1 of an extent of measuring 8.90.5 hectares situated at Kattupalli Village, Ponneri Taluk, Tiruvallur District in WP.15858/2000 in G.O.Ms.No.806 Industries (MID II) dated 27.11.1998 and G.O.Ms.No.410, Industries (MID II) dated 28.07.98 and published in the Government Gazette dated 08.12.98 and 23.7.98 respectively and the Declaration issued by the 1st Respondent under Section 6 of the Act in G.O.Ms.No.188 Industries (MID II) dated 01.03.99 published in the 'Madurai Mani" Newspaper dated 05.03.99 and G.O.Ms.No.571 Industries (MID II) dated 08.09.98 published in the Government Gazette dated 08.09.98 and quash the same in so far as the petitioner's lands are concered and consequently direct the Respondents to delete the petitionr's lands measuring 12.15 acres (4.92.0 hectares) situate in Survey Nos.3/1, 136 and 137 in No.141, Puzhidivakkam Village, Ponneri Taluk, Tiruvallurvar District from the proposed acquisition in WP.7476/2000.

To issue a Writ of Certiorarified Mandamus after calling for the records in G.O.Ms.No.85 dated 21.03.1997 issued by the first respondent quash the same and consequently direct the first respondent not to setup the proposed petrochemical park at Kattupalli Island, Tiruvallur District, Tamil Nadu (in WP.No.7613/2000).

For Petitioner in
W.P.Nos.17195&17196/98 : Mr.M.S.Subramanian

W.P.Nos.19750&19751/99
& 5390, 5913 to 5915 &
6903/00 : Mr.J.R.K.Bhavanantham

W.P.Nos.2926 to 2928,
2930 & 7476/00 : Mr.P.Anbarasan

W.P.No.15858/00 : Mr.K.Bijai Sundar

W.P.No.7613/00 : Mr.S.Mohan
For Ms.D.Geetha

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For State Government : Mr.N.Kannadasan
Addl. Advocate General
Assisted by
Mr.I.Paranthaman, G.A.

For Union of India : Mr.P.Wilson
Asst. Solicitor General

For TIDCO : Mr.M.Vijayan
For M/s. King & Patridge

For Pollution Control Board : Mr.Ramanlal

For Ennore Pulicat Environmental Protection Forum : Mr.T.K.Ramkumar

O R D E R

P.D.DINAKARAN, J.

I. PREFATORY CAVEAT

The meat of the matter is the tussle between eco-environmental maintenance and vigorous industrialization. To answer as to the need of the day for the right to life, viz., whether we should maintain eco-friendly environment or opt for prosperous economic growth, neither the eco-environment alone nor the industrial and economic growth by itself will meet the human needs in the global competition. Then, what is desirable is a sustainable development, by being resilient, but not rigid; organic, but not static; liberal, but not strict; wider, but not narrow, as to both eco-friendly environment and prosperous industrial development, that are to be worked out harmoniously, to meet the challenges in global economic competition and in order to meet the ends of socio-economic justice.

And

the core of the dispute raised is, whether the acquisition of lands impugned in these writ petitions for Petrochemical Park, a major industrial project, satisfies the pious wish of the statutory mandate, for invoking emergency and dispensing with the statutory enquiry; and stands to the test of executive competency of the State Government, beneath the canopy of constitutional provisions, focussed sharply on the legal screen?

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II. THE IMPUGNED PROCEEDINGS

2.1. In the public interest litigation, W.P.No.7613 of 2000 challenge is made to G.O.Ms.No.85, Industries (MID-II) Department, dated 21.3.1997, whereunder the State Government had accorded sanction to acquire the lands in Kattupalli Village, Ponneri Taluk, Tiruvallur District for setting up of Petrochemical Park on the ground of environment hazards and violations of the guidelines of Coastal Regulation Zones.

2.2. Among other writ petitions, while W.P.Nos.17195 and 17196 of 1998 are filed challenging the notification issued under Section 4(1) of the Land Acquisition Act (for brevity, "the Act") in G.O.Ms.No.232, Industries (MID-II) Department dated 18.6.1998, in other writ petitions, the challenge is made to notification issued under Section 4(1) of the Act and declaration made under Section 6 of the Act in G.O.Ms.No.231, Industries (MID-II) Department, dated 18.6.1998 and G.O.Ms.No.455, Industries (MID-II) Department, dated 8.6.1999 respectively in W.P.No.19750 of 1999, G.O.Ms.No.216, Industries (MID-II) Department, dated 15.6.1998 and G.O.Ms.No.454, Industries (MID-II) Department dated 8.6.1999 respectively in W.P.No.19751 of 1999, G.O.Ms.No.810, Industries (MID-II) Department dated 12.11.1999 and G.O.Ms.No.6, Industries (MID-II) Department dated 7.1.2000 respectively in W.P.No.2926 of 2000, G.O.Ms.No.752, Industries (MID-II) Department dated 7.10.1999 and G.O.Ms.No.935, Industries (MID-II) Department dated 13.12.1999 respectively in W.P.Nos.2927, 2928 and 2930 of 2000, G.O.Ms.No.810, Industries (MID-II) Department dated 12.11.1999 and G.O.Ms.No.6, Industries (MID-II) Department dated 7.1.2000 respectively in W.P.No.5390 of 2000, G.O.Ms.No.754, Industries (MID-II) Department dated 7.10.1999 and G.O.Ms.No.941, Industries (MID-II) Department dated 13.12.1999 respectively in W.P.Nos.5913 to 5915 of 2000, G.O.Ms.No.709, Industries (MID-II) Department dated 26.10.1998 and G.O.Ms.No.8, Industries (MID-II) Department dated 11.1.1999 respectively in W.P.No.6903 of 2000, G.O.Ms.Nos.806 & 410 Industries (MID-II) Department dated 27.11.1998 & 20.7.1998 and G.O.Ms.Nos.188 & 571, Industries (MID-II) Department dated 1.3.1999 & 8.9.1998 respectively in W.P.No.7476 of 2000 and G.O.Ms.No.235, Industries (MID-II) Department dated 18.6.1998 and G.O.Ms.No.451, Industries (MID-II) Department dated 8.6.1999 respectively in W.P.No.15858 of 2000.

III.THE BACKDROP OF THE LIS

3.1. The State Government, with an aim to improve the economic growth in the State by establishing major industries as an industrial policy, decided to set up a Petrochemical Park as early as 1997 at the cost of Rs.30,000 crores in the State of Tamil Nadu over an extent of 7155.95 acres of lands which are spreading over in four villages, viz., Puzhudivakkam, Kattupalli, Kalanji and Voyalur.

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3.2. The location of the Petrochemical Park in the said villages is identified as the same is approximately 35 km. away from Chennai and well connected by road, rail, air and sea. It is situated at 8 kms. from the nearest town of Minjur and 5 km. from the nearest railway station of Athipattu and also located on the east and western side of Buckingham canal.

3.3. The investment for the above major industry is to create substantial contribution to the Gross Domestic Product of the State and will also provide direct employment for nearly 10,000 Engineers and technically qualified persons and indirect job opportunity for 25,000 people. That apart, the contribution by the Gross Domestic Product by the major industry will increase the demand for service such as, transportation, housing, etc. This will again contribute for the creation of additional employment in and around the City of Chennai and it will be a major socio-economic turn-key project for the upliftment of the people of the State.

3.4. To achieve the above aim, the Government by G.O.Ms.No.85, Industries (MID-II) Department, dated 21.3.1997 accorded permission to the SIPCOT to undertake the setting up of the Petrochemical Park and thereafter, taking into consideration the successful execution of the projects like, Jayamkondam Lignite Power Corporation, Hi-tech Park, etc., by the Tamil Nadu Industrial Development Corporation Ltd. (in short, "TIDCO"), the State Government requested TIDCO to set up the Petrochemical Park and orders were passed in G.O.Ms.No.85A, dated 25.5.1997. Pursuant to the said decision, the Government proposed to acquire the lands impugned by issuing various notifications under section 4(1) of the Act to the owners of the lands. However, taking an exception to the normal course of acquisition, the government decided to invoke the emergency clause under section 17(1) of the Act and to dispense with the enquiry under Section 5(A) of the Act by exercising the powers conferred under section 17(4) of the Act and thus proceeded further with the impugned acquisition proceedings and passed the declaration under section 6 of the Act, of course with a delay of 4 months. The notifications under section 4(1) of the Act and the declaration under section 6 of the Act are being challenged in this batch of writ petitions.

3.5. Apart from the landowners, a public interest litigation was also filed in W.P.No.7613 of 2006 to protect the environment in the locality based on Article 21 read with Article 48A of the Constitution of India.

IV. OPPOSITION TO THE PROPOSED PETROCHEMICAL PARK AND THE IMPUGNED ACQUISITION OF LANDS

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4.1. The proposal for setting up the Petrochemical Park in Pulidivakkam, Kattupalli, Kalangi and Voyalur II Villages, by impugned land acquisition proceedings is challenged to protect eco-friendly environment on the basis of Articles 14, 19(1)(g) and 21 of the Constitution of India and also on the ground of violations of the guidelines of Coastal Regulation Zones, notified under the provisions of the Environment (Protection) Act and Rules, as hereunder:

(i) the setting up of the Park will be an environmental hazard in the impugned locality and would also endanger the Pulicat Lake as well as the Pulicat Birds Sanctuary;
(ii) the impugned proposal is in violation to Guidelines of Coastal Regulation Zone declared under the Environment (Protection) Act and Rules;
(iii) the natural springs and the fresh water ponds in Kattupalli Island, which attract birds of rare species, as well as the important species of tropical dry evergreen vegetation having medicinal value therein will be destroyed totally, by establishing of the impugned Park; and
(iv) the Petrochemical Park is opposed to the report of the Expert Committee relied on by the petitioner.

4.2. Ennore Pullicat Environmental Protection Forum, a third party, also got impleaded themselves by filing WP.M.P.No.18576 of 2006, in the above public interest litigation demanding environmental maintenance and opposing the impugned proposal.

4.3. Questioning the validity of the impugned acquisition, it is contended that,

(i)(a) Having already accorded sanction in favour of SIPCOT for setting up of Petrochemical Park, by G.O.Ms.No.85, dated 21.3.1997, the impugned acquisition should not have been proceeded with by the TIDCO without a fresh sanction in its favour merely based on G.O.Ms.No.85A, dated 25.5.1997 as the change of requisitioning body vitiates the impugned acquisition. The decision in U.P.Awas Evam Vikas Parishad v. Gyan Devi, 1995 (2) SCC 326 is relied on in this regard;

(b) Since TIDCO redrew the project, the public purpose proposed to be executed by SIPCOT, as per the sanction accorded by the Government in G.O.Ms.No.85, Industries Department, dated 21.3.1997

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does not survive, as per the decision in Municipal Corpn. of Greater Bombay v. Industrial Development Investment Co. (P) Ltd., (1996) 11 SCC 501;

(v) The notification under Section 4(1) of the Act was not published in the manner required by law and therefore, the impugned acquisition proceedings are arbitrary and violative of Article 14 of the Constitution of India;

(vii) The issuance of different notifications under Section 4(1) of the Act for the same purpose suffers from vagueness;

(ix)(a) The statutory right conferred under section 5A of the Act enabling the landowners to file objections to the acquisition being mandatory, the denial of the same by invoking the urgency clause under Section 17(1), by exercising the power conferred under section 17(4) of the Act is arbitrary, unreasonable and unjustified for want of tangible reasons; and

(b) The delay in passing declaration under section 6 of the Act even after four months from the date of publication of notification under section 4(1) of the Act apparently belies the urgency; and

(xiii) the State Government has no jurisdiction to initiate the impugned acquisition proceedings without due delegation of powers by the Union of India as contemplated under Article 258 read with Article 73 of the Constitution of India, as the subject matter, viz., setting up of Petrochemical Park falls under Entry 53 of List I of VII Schedule to the Constitution of India.

4.4. It is commonly contended that,

(i) the impugned acquisition as well as proposed Petrochemical Park is in violation of Articles 14, 19 (1)(g) and 21 of the of the Constitution of India; and

(ii) both the impugned acquisition and proposed Petrochemical Park are opposed to the Directive Principles of State Policy as it offends the adequate means of livelihood of the people and endangers the environment, in the locality.

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V. DEFENCE TO SUSTAIN THE PROPOSED PROJECT AND THE IMPUGNED ACQUISITION

5. Based on the detailed and independent counter affidavits filed on behalf of the respondents, Mr.N.Kannadasan, learned Additional Advocate General sustaining the proposed project and the impugned acquisition, contends that

(i) the proposed Petrochemical Park, a major industrial project, originally estimated at the cost of Rs.30,000 crores in the year 1997, would provide,
  (a) direct employment opportunity to more than 10,000 persons, viz. Engineering Degree holders as well as technicians and field workers; and
  (b) additional and indirect job opportunities to nearly 25,000 persons;

(ii) the location for the impugned project was identified as the same is closer to Chennai and easily accessible by means of road, rail, air and sea;

(iii) even though the project is proposed to be set up in vast extent of land of 7155.95 Acres, 4302 acres of land belongs to the Government and only the rest is proposed to be acquired, even out of which 2542 acres are dry lands and 311 acres alone are wet lands;

(iv) a very bare minimal number of families, viz., 585 in number residing in the impugned areas, are affected due to the impugned land acquisition and required to be rehabilitated; the interest of these 585 families also would be taken care of under the Resettlement and Rehabilitation Package; and the Government has already identified two sites for their rehabilitation;

(v) the project includes several development schemes, viz., Common area development and reserving about 1200 acres of land for the green belt, besides Roads, Bridges, Drainage System, Bunds, Service Corridors, Administrative Facilities, Fresh Water Supply, Sea Water Supply, Effluent disposal system, Railway Sidings, Power Supply Facilities, Street Lighting, Telecommunications, and Fire Fighting facilities.

(vi) the proposed project has already been evaluated by National Environmental Engineering Research Institute (for brevity, "NEERI"), an expert body functioning under the Council of Scientific Industrial Research, Government of India, who have undertaken to set up separate environmental management cell to protect, monitor and control all the matters concerning environment;

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(vii) there will not be any environmental hazard by setting up the proposed project in the locality; nor there will be any environmental disaster to the Pulicat Lake or Pulicat Bird Sanctuary, as per the study report of the NEERI;

(viii) there is no violation to the guidelines of the Coastal Regulation Zone notified by the Central Government under the provisions of the Environment (Protection) Act, 1986 and the Rules framed thereunder, for the impugned area; nor there is any violation to the norms prescribed by the Tamil Nadu Pollution Control Board;

(ix) the publication of the notifications under Section 4(1) of the Act were made in two Tamil dailies as well as by beat of tom-tom in the locality, as contemplated under law;

(x) the State Government, after due application of mind on the materials available, have taken a decision invoking emergency clause under Section 17(1) and dispensing with the enquiry contemplated under Section 5A of the Act, by exercising the powers conferred under Section 17(4) of the Act and therefore, there is no violation of any fundamental or statutory rights of the petitioners in this regard;

(xi) since the impugned acquisition is well within the executive competence of the first respondent, there is no need for an order by the Union of India delegating the powers under Article 258 of the Constitution of India; and

(xii) in any event, there is no violation of any of the fundamental rights conferred under Articles 14, 19(1)(g) and 21 of the Constitution of India nor any violation to the Directive Principles of State Policy, offending the adequate means of livelihood of the people and endangering the environment, in the locality.

VI. ISSUES

6. We have bestowed our careful consideration to the contentions of both sides and culled out the following issues for our discussion:

(i) Whether the proposal to set up the Petrochemical Park be detrimental to the eco-friendly environment in the impugned locality?

(ii) Whether the impugned acquisition is bad for change of requisitioning body or any non compliance of the procedure contemplated under Section 4(1) or dispensation of enquiry

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contemplated under Section 5-A of the Act or suffers from executive competency of the State Government for want of delegation under Article 258 of the Constitution of India?

VII. ENVIRONMENTAL HAZARDS COMPLAINED IN THE PIL

Issue: (i) Whether the proposal to set up the Petrochemical Park be detrimental to the eco-friendly environment in the impugned locality?

7.1. Article 39 contemplates that the State shall direct its policy towards securing that the operation of the economic system does not result in the concentration of wealth and the means of production to the common detriment. Article 47 refers to the duty of the State to raise the level of nutrition and standard of living and to improve the public health. As per Article 48A of the Constitution of India, the State shall endure to protect and improve the environment and the said Directive Principles of State policy is meant to protect the fundamental right conferred under Articles 14 and 21 of the Constitution of India, viz. Equality before law and Protection of life and personal liberty. Whereas the fundamental duty conferred under Article 51A(g) points out the obligation of the citizen to protect and improve the environment.

7.2. Articles 39, 47, 48A and 51A(g) of the Constitution of India read as follows:

"39. Certain principles of policy to be followed by the State.- The State shall, in particular, direct its policy towards securing-
(a) to (b) ....
(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
(d) to (f) ...

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.— The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48-A. Protection and improvement of environment and safeguarding of forests and wildlife.— The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

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51-A. Fundamental duties.- It shall be the duty of every citizen of India-
(a) to (f) ...
(g) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.
(h) to (k) ... ”

7.3. Right to healthy environment is the legitimate expectation, an aspect protected under Article 14 of the Constitution of India. Right to healthy environment is also a part of right to life protected under Article 21 of the Constitution of India.

7.4. The "first generation" rights are generally political rights such as those found in international convention on Civil and Political rights. The "second generation" rights are social and economic rights as found in the International Covenant on Economics, Social and Cultural Rights. The "third generation" rights, in today's emerging jurisprudence, encompass a group of collective rights demanding rights to healthy environment and giving rise to the principle of State's responsibility to protect the environment and this responsibility is clearly enunciated in the United National Conference on the Human Environment, Stockholm 1972 (Stockholm Convention) to which India was a party, vide Intellectual Forum v. State of A.P., 2006 (3) SCC 549.

7.5. There is no doubt about the fact that there is a responsibility bestowed upon the Government to protect and preserve the environment, as undoubtedly, hygienic environment is an integral facet of the right to a healthy life and it would be impossible to live without a humane and healthy environment vide Godavarman v. Thirumal Pad, Tamil Nadu, 2002 10 SCC 606.

7.6. While the right to clean environment is a guaranteed fundamental right under Articles 14 and 21 of the Constitution of India, the right to development through industrialization equally claims priority under fundamental rights, particularly under Articles 14, 19 and 21 of the Constitution of India. Therefore, there is a necessity for a sustainable development harmonizing both the needs and striking a golden balance between the right to development and right to clean environment – A Concept of Sustainable Development, an integral part of Articles 14 and 21 of the Constitution of India vide Jayal N D v. Union of India, 2004 (9) SCC 362.

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7.7. Before proceeding further, a sharp and detailed reference on the concept of sustainable development is inevitable.

(i) The Stockholm Conference of 1972 refers to the inter-generational equity Principles 1 and 2.

> Principle 1: Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations.
>
> Principle 2: The natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management, as appropriate.

(ii) Several international conventions and treaties have recognised the above principles and, in fact, several imaginative proposals have been submitted including the locus standi of individuals or groups to take out actions as representatives of future generations, or appointing an ombudsman to take care of the rights of the future against the present.

(iii) The inadequacies of science result from identification of adverse effects of a hazard and then working backwards to find the causes. Secondly, clinical tests are performed, particularly where toxins are involved, on animals and not on humans, that is to say, are based on animal studies or short-term cell-testing. Thirdly, conclusions based on epidemiological studies are flawed by the scientist's inability to control or even accurately assess past exposure of the subjects. Moreover, these studies do not permit the scientist to isolate the effects of the substance of concern. It is the above uncertainty of science in the environmental context, that has led international conferences to formulate new legal theories and rules of evidence. The "uncertainty" of scientific proof and its changing frontiers from time to time has led to great changes in environmental concepts during the period between the Stockholm Conference of 1972 and the Rio Conference of 1992.

(iv) The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based

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on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by (justified) concern or risk potential. The precautionary principle was recommended by the UNEP Governing Council (1989). However, summing up the legal status of the precautionary principle, one commentator characterized the principle as still "evolving", for though it is accepted as part of the international customary law, "the consequences of its application in any potential situation will be influenced by the circumstances of each case".

(v) The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. In the international sphere, "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future". The Commission was chaired by the then Prime Minister of Norway, Ms G.H. Brundtland and as such the report is popularly known as "Brundtland Report".

(vi) In 1991 the World Conservation Union, United Nations Environment Programme and Worldwide Fund for Nature, jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living. Finally, came the Earth Summit held in June 1992 at Rio which saw the largest gathering of world leaders ever in the history — deliberating and chalking out a blueprint for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution.

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(vii) Earlier, the concept was based on the "assimilative capacity" rule as revealed from Principle 6 of the Stockholm Declaration of the U.N. Conference on Human Environment, 1972. The said principle assumed that science could provide policy-makers with the information and means necessary to avoid encroaching upon the capacity of the environment to assimilate impacts and it presumed that relevant technical expertise would be available when environmental harm was predicted and

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there would be sufficient time to act in order to avoid such harm. But in the 11th Principle of the U.N. General Assembly Resolution on World Charter for Nature, 1982, the emphasis shifted to the "precautionary principle", and this was reiterated in the Rio Conference of 1992 in its Principle 15.

> "Principle 15.—In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for proposing cost-effective measures to prevent environmental degradation."

(viii) During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. "Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". The "Sustainable Development", therefore, is a balancing concept between ecology and development, has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists. Some of the salient principles of "Sustainable Development", as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries.

(ix) In Vellore Citizens' Welfare Forum v. Union of India (AIR 1996 SC 2715) a three-Judge Bench of the Apex Court referred to the "precautionary principle" in environmental matters. Kuldip Singh,J. after referring to the principles evolved in various international conferences and to the concept of "sustainable development", stated that the precautionary principle, the polluter-pays principle and the special concept of onus of proof have now emerged and govern the law in our country too, as is clear from Articles 47, 48-A and 51-A(g) of our Constitution and that, in fact, in the various environmental statutes, such as the Water Act, 1974 and other statutes, including the Environment (Protection) Act, 1986, these concepts are already implied. These principles have now become part of our law. Thus, it was held that "The Precautionary Principle" and "The Polluter Pays Principle" are essential features of "Sustainable Development".

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(x) The "Precautionary Principle" — in the context of the municipal law — means:

(i) Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.

(xi)"The Polluter Pays Principle" has been held to be a sound principle by the Apex Court in Indian Council for Enviro-Legal Action v. Union of India, 1996 (3) SCC 212. The Court observed: "... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining this country". The Apex Court observed that "... once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on".

...

"Consequently the polluting industries are absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas. The 'Polluter Pays Principle' as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology. The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. "

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(xv) Apart from these constitutional mandates under Articles 14, 21 of the fundamental rights, 47, 48A of the directive principles of State Policy and 51A(g) of the Fundamental Duty, to protect and improve the environment there are plenty of post-independence legislations on the subject but more relevant enactments for our purpose are: the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection) Act, 1986 (the Environment Act). The Water Act provides for the constitution of the Central Pollution Control Board by the Central Government and the constitution of the State Pollution Control Boards by various State Governments in the country. The Boards function under the control of the Governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. It also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country.

7.8.1. The Environment (Protection) Act 1986 (The Environment Act), was also enacted for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment, safety and health.

7.8.2. By exercising the power conferred under Sections 6 and 25 of the Environment (Protection) Act, 1986, the Environment (Protection) Rules, 1986 (The Environment Rules) were made by the Central Government.

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7.8.3. Section 3 of the Environment Act and Rule 5 of the Environment Rules, empower the Central Government to declare the coastal stretches as Coastal Regulation Zone (for brevity, "CRZ").

7.8.4. By exercising the said power, the Central Government by notification No.S.O.114(E), dated 19.2.1991, declared the CRZs, for regulating activities in the CRZs. Accordingly, the Central Government declared that the impugned area falls under CRZ-III.

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7.8.5. As per the notification dated 19.2.1991 read with Annexure I, the following prohibitions are imposed with respect to CRZ-III:

"(i) The area upto 200 metres from the HTL is to be earmarked as 'No Development Zone'. No construction shall be permitted within this zone except for repairs of existing authorised structures not exceeding existing FSI, existing plinth area and existing density, and for permissible activities under the notification including facilities essential for such activities. An authority designated by the state government/union territory Administration may permit construction of facilities for water supply, drainage and sewerage for requirements of local inhabitants. However, the following uses may be permissible in this zone- agriculture, horticulture, gardens, pastures, parks, play fields, forestry and salt manufacture from sea water.

(ii) Development of vacant plots between 200 and 500 metres of High Tide Line in designated areas of CRZ-III with prior approval of Ministry of Environment and Forests (MEF) permitted for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in the guidelines at Annexure-II.

(iii) Construction/reconstruction of dwelling units between 200 and 500 metres of the HTL permitted so long it is within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans. Building permission for such construction/ reconstruction will be subject to the conditions that the total number of dwelling units shall not be more than twice the number of existing units; total covered area on all floors shall not exceed 33 per cent of the plot size; the overall height of construction shall not exceed 9 metres and construction shall not be more than 2 floors (ground floor plus one floor). Construction is allowed for permissible activities under the notification including facilities essential for such activities. An authority designated by state government/ union territory Administration may permit construction of public rain shelters, community toilets, water supply, drainage, sewerage, roads and bridges. The said authority may also permit construction of schools and dispensaries for local inhabitants of the area for those panchayats the major part of which falls within CRZ if no other area is available for construction of such facilities.

(iv) Reconstruction/alterations of an existing authorised building permitted subject to (i) to (iii) above."

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(emphasis supplied)

7.8.6. Similarly, as per the said notification dated 19.2.1991, any activity, which is proposed to be undertaken within any of the CRZs, should have 'environmental clearance' from the Ministry of Environment and Forests, Government of India. In the instant case, the demarcation of CRZ-III has been approved by the Ministry of Environment and Forests, Government of India.

8.1. Now, turning to the other side of the coin of "sustainable development", we must never overlook the basic aim of our country, viz., to make India into a powerful model industrial country.

8.2. Industrialization alone can generate the wealth required for taking care of the people, as is the mandate of the Directive Principles of our Constitution. No body can dispute the need for protecting the environment, as everyone is entitled to pure air and water. Greenery should be protected to ensure pure air. Trees and forest have to be protected for ensuring regular rainfall and preventing soil erosion. Wild life has to be protected for maintaining ecological balance.

8.3. But, there should not be a tug-of-war between industrialization and environment protection. Industrialization should certainly ensure a good environment. Thus, without compromising any harm to the environment, the industrialization should also grow, otherwise, we would not be in a position meet the economic challenges particularly in the context of globalization.

8.4. It is true, any large scale industrial project is expected to cause environmental impacts near and around the project site during its construction and operation phases. The types and intensity of impacts on various components of the environment depend on the nature and size of the project as well as its geographical location. The net impacts from individual project can be quantified through Environmental Impact Assessment (EIA) Study for various components like air, noise, water, land, biological and socio-economic environment prior to the implementation of the project.

8.5. The Central Government, therefore, by virtue of the power conferred under the provisions of the Environment (Protection) Act, 1986 and the Rules framed thereunder, reserved the power for themselves to declare the CRZ and to accord environmental clearance for any such activities proposed to be undertaken within the CRZs notified thereunder.

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9.1. Of course, the petitioners are relying upon a report prepared in the month of February, 2000 by a Committee consisting Hon'ble Mr.Justice H.Suresh, a Retired Judge, Mr.A.Sreenivasan, Retired Joint Director of Fisheries Dr.Vasanthi Devi, Former Vice Chancellor of Manonmaniam Sundaranar University, Tamil Nadu and Dr.M.Arunachalam, a Reader in the Centre for Environmental Science, Manonmaniam Sundaranar University, Tamil Nadu. The findings and recommendations of the said Committee, so far as relevant, are extracted as hereunder:

i. the drawing of enormous quantities of water from the Ennore creek by North Chennai Thermal Power Station which is naturally connected with Pulicat is causing enormous hardship to the fishing people and destroying the once abundant fish resources. This withdrawal of water from the Ennore creek must be stopped;

ii. the distance upto which the development along rivers, creeks and backwaters is to be regulated shall be governed by the distance upto which the tidal effect of the sea is experienced in rivers, creeks or backwaters as the case may be, and should be clearly identified in the Coastal Zone Management Plan;

iii. a moratorium shall be called for on any further industrial development between Ennore and Pulicat Coastal stretches irrespective of the category of the industry;

iv. the setting up of North Chennai Thermal Power Station aggravates the ecological damage to the Ennore creek, to the Pulicat Lake and to the inshore sea off Ennore and Pulicat;

v. the North Chennai Thermal Power Station, the Ennore Satellite Port and the Petrochemical Park will continue to violate several central and State enactments, notifications and Supreme Court directives;

vi. the NCTPS and the Port project have already begun to cause permanent damage to the coastal ecology in the form of loss of bio-diversity, loss of several habitats from terrestrial, aquatic and land water interface, salinisation of land and water, pollution of air and water etc. The Petrochemical Park will further destroy in a rapid manner, this coastal ecology, its water bodies, flora and fauna and marine life;

vii. Ministry of Environment and Forests has laid down 23 conditionalities in 1992 to be fulfilled for the construction of the new Satellite Port at Ennore. Most of these conditionalities have been violated by the Port Authorities and also they continue to violate them as the construction is still in progress;

viii. all these mega projects are in violation of human rights. They have and will endanger and deprive coastal communities of their right to life and livelihood, right

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to shelter, right to work and right to development, right to food security and sustainable agriculture, right to water, right to traditional usage of pathways and common property resources. Women and children will be the most affected as these projects will also result in a more inhuman and degrading treatment for women and children;

ix. the proposed Petrochemical Industrial Complex are liable for violating numerous environmental laws. From our visits as stated earliest it is being dumped in the most fragile zones which fall under CRZ(1);

x. All the three mega projects are in violation of under Section convention on the law of the sea (UNCLOS) signed in 1982 and ratified in 1994. Article 207 states that "States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from the line-based sources, including rivers, estuaries, pipelines, and out fall structures, taking into account internationally agreed rules, standards and recommended practices and procedures". States should make every effort to ensure that fish workers are not adversely affected by the indiscriminate development of coastal industries. States should appropriately protect the rights of fishers and fish workers, particularly those engaged in subsistence, small-scale and artisanal fisheries, to a secure and just livelihood, as well as preferential access, where appropriate, to traditional fishing grounds and resources in the waters under their national jurisdiction.

xi. States should ensure that an appropriate policy, legal and institutional framework is adopted to achieve the sustainable and integrated use of the resources, taking into account the fragility of coastal ecosystems and the finite nature of their natural resources and the needs of coastal communities. States should develop, an appropriate, institutional and legal frameworks in order to determine the possible uses of coastal resources and to govern access to them taking into account the rights of coastal fishing communities and their customary practices to the extent compatible with sustainable development. States should facilitate the adoption of fisheries practices that avoid conflict among fisheries resources users and between them and other users of the coastal area.

xii. The Petrochemical Industrial Complex to be located in Kattupalli Panchayat (Island) will destroy this island and Pulicat lake. The lake would become a convenient dumping ground for hazardous chemical waste and would destroy its unique ecosystem.

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xiii.The Pulicat system has been identified recently as a Ramsar site of international importance by the International Union for the Conservation of nature (IUCN) by considering the functions and values of this system. Also Worldwide Fund for Nature and Government of India included Pulicat lake as a protected area.

xiv.The avifauna that migrates to the sanctuary also roosts in the Kattupalli island. If this site is diverted for industrial construction, Pulicat Sanctuary will loose its birds wealth. The effluents from the Petrochemical park will have a hazardous impact on the Biodiversity / Gene – pool of the lake, Ennore creek, Bay of Bengal and Buckingham canal.

xv.The object of siting the Petrochemical Industries in Kattupalli seems to be to make use of the Ennore Port facilities. To make the Port viable, the government has set about siting Petrochemical industries in this fragile island ecosystem. With the most hazardous industries in Manali, NCTPS on one side, the Ennore Port and LNG Terminal together with potentially dangerous fly ash tanks, the proposed Petrochemical complexes will at one blow sound the death knell for this entire eco-system and the livelihood of nearly 3 lakh people.

xvi.The petrochemical park is the least desirable project in this fragile eco-system. It will have the most damaging impact on a special island ecosystem of Kattupalli and the important brackish water ecosystem of Pulicat lake both of which need to be conserved. Kattupalli island borders upon Pulicat lake which has a density bird population and dense tropical vegetation of great diversity.

xvii.Pulicat lake is a sister lake of Chilka both of which should not become extinct through human intervention. Once damaged this ecosystem cannot be restored to its original state in physicochemical and biological parameters. Migratory fish from the sea ceased to enter and exit to the Pulicat Lake and Ennore backwaters. The fish wealth not only of the Tamil Nadu part of Pulicat Lake but also of the Andhra part will in the long run be damaged. For this reason we emphasise that no industrial development, including infrastructure project should be permitted in the coastal stretch from Ennore to Pulicat Lake.

xviii.The Petrochemical Project violates CRZ notification and will create an irrevocable damage to the surrounding water bodies. Enormous number of nests of sea turtles exist in the parallel coastal stretch to Pulicat lake as it is a breading ground for sea turtles. All this rich marine life will be destroyed.

xix.Pulicat Bird sanctuary is 5 km away from Kattupalli

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island. The hazardous effluents will definitely destroy the habitats and spawning grounds of fishes, prawn and turtles. This world famous wetlands is an important breeding ground of oysters, fishes and prawns.

xx. The Government of Tamil Nadu has directed the District Collector to invoke 17 (1) of Land Acquisition Act which is an emergency provision. This is a misuse of the Land Acquisition Act and a violation of the use of its emergency provision Acquiring land and developing infrastructure for the needs of foreign chemical giants cannot be construed at all as an emergency. The acquisition itself is violative of CRZ law as this is a protected area classified as CRZ and hence no development at all can take place in this area.

xxi. In Kattupalli about 2500 families are living. Their usufructural rights to life and livelihood is threatened by the upcoming Petrochemical Park.

xxii. The displacement of agriculture by the Petrochemical park will radically and adversely affect the lives of the rural population. Agriculture and fishing, rice fields, village forests, fuel and fodder will be lost. The Petrochemical Park will also encroach upon hundreds of acres of common lands which fulfilled a multitude of uses for the village population.

xxiii. It now proposes to permit infrastructure development for mega industries and storage of petroleum products and transfer of hazardous substances.

xxiv. The concept of balanced but optional exploitation of coastal resources advocated by the corporate sector and their appendages in government and scientific institutions is the most dangerous strategy for destroying the coast. This exploitative – pro multinational – big business – hazardous industry – tourism promotion model will devastate the coast, the ocean and its people.

xxv. All reclassification of Coastal Zones must be stopped especially CRZ I & CRZ III. Concerned project authorities or the corporate sector should not be permitted to engage the designated authorities for marking the High Tide Line and thereby submitting for new reclassification. Law must be accordingly amended to ensure that the village panchayat decision, with approval from Panchayat Union and District panchayat is mandatory. The Panchayats must be empowered to invite experts & NGO's to assist in arriving a Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 conclusion.

xxvi. District Collectors are not the competent authority to hold a mock public hearing and then decide the coastal areas that need reclassification.

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xxvii.Till today the Government of Tamil Nadu has not yet marked the High Tide Line but permitted project based markings by the Public Sector and Private Sector.

xxviii.The Ennore Satellite Port has violated several conditionalities set by the MoEF for the construction of the Port. The Environmental Monitoring Committee for the Port has not taken steps to ensure compliance with the conditionalities.

xxix.Hot Thermal water is presently being released by the NCTPS into the Buckingham canal and by implication into the Pulicat Lake and water spread area. This must be immediately stopped. NCTPS has till date no treatment or coolant plant for treating thermal water.

9.2. In our considered opinion, most of the findings and recommendations are based on the environmental hazards complained to be caused by the existing two projects, viz., North Chennai Thermal Power Station (NCTPS) and Ennore Satellite Port, either related to the hazard being caused to the inhabitants therein, as well as the Pulicat Lake and Pulicat Bird Sanctuary, etc. If that be so, the only option is to approach appropriate authorities under the Environment Act and the Rules framed thereunder and seek appropriate directions against those existing major industrial units, viz., NCTPS and Ennore Satellite Port to provide an effective effluent treatment plant, and in which event, the authorities concerned after hearing those major units, shall study the matter and give appropriate direction to rectify the defects and to maintain the ecological balance, applying the Precautionary principle and Polluter Pays principle, as laid down by the Apex Court in Vellore Citizens' Welfare Forum v. Union of India (AIR 1996 SC 2715), and Indian Council for Enviro-Legal Action v. Union of India, 1996 (3) SCC 212, favouring sustainable development.

9.3. But we are unable to appreciate the recommendations of the Committee relied on by the petitioner that the laws should be amended so that the decision of the Village Panchayat will be mandatorily binding for the reclassification of the Coastal Regulation Zone, as the same is outside the purview of the judicial review under Article 226 of the Constitution of India.

9.4. To meet other recommendations of the Committee relied on by the petitioners, we looked into the report submitted in March, 1998 by the NEERI, an expert body functioning under the Council of Scientific Industrial Research, Government of India, who have in their report, justified the proposal of setting up the Petrochemical Park, its location and the protection and improvement of environment, socio-economic benefit etc.

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10.1. On the other hand, NEERI, not only studied environmental impact assessment of various components like air, noise, water, land, biological and socio-economic environment, prior to the implementation of the project, but also issued certain regulatory measures.

10.2. NEERI submitted a detailed study report during March, 1998 on the environmental impact on the following subjects:

(i) Project Setting.
(ii) Climatological Conditions
(iii) Soil Characteristics
(iv) Facilities Available in the Study Area
    (a) Power Supply
    (b) Water Supply
    (c) Approach Roads
    (d) Railway Siding.
    (e) Port Facilities.
(v) Industries Planned in Petrochemical Park.
(vi) Methodology of Environmental Impact Assessment
    (a) Air Environment
    (b) Noise Environment
    (c) Water Environment
    (d) Land Environment
    (e) Biological Environment
    (f) Socio-economic Environment
(vii) Baseline Environmental Status and Identification of Impacts.
(viii) Air Environment
(ix) Noise Environment
(x) Water Environment
(xi) Land Environment
(xii) Biological Environment
(xiii) Socio-economic Environment
(xiv) Identification of Impacts
(xv) Prediction of Impacts.
    (a) Air Environment
    (b) Noise Environment
    (c) Water Environment
    (d) Biological Environment
    (e) Land Environment
    (f) Socio-economic environment
(xvi) Evaluation of Impacts
(xvii) Environmental Impact Statement
(xviii) Overall Impact

10.3. The salient features of the study report of NEERI are extracted as under:

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- The proposed petrochemical project site is located in Ponneri taluk of Chengai-MGR District in Tamil Nadu. The district is located between 12°5' – 13°33' North latitude and 80°5' – 80°20' East longitude. The site is located in 13°06' North latitude and 80°18' East longitude and lies 3-4 m above mean sea level (MSL), with Bay of Bengal on eastern side and Buckingham canal running along the ocean at a distance of 0.5 to 1.0 km across the proposed site. Buckingham canal is the main source of drainage in the area. The water is brackish in the Canal with no flow except in high tides and monsoons. The draining capacity of the canal is very poor as it is almost at sea level. Ennore estuary is at a distance of 8 km to the southern side of the project site. Pulicat Lake (salt water) is at a distance of 16.5 km from the proposed petrochemical Park site in the Northern direction.

- The only major industry within 10 km radius of the project site is the new North Madras Thermal Power Plant (NNMTPP) located at Athipattu village in the South-Western direction of the proposed site. Athipattu is the nearest Railway station at a distance of 8 km from the proposed site.

- There are only four small villages where mostly fishermen live. There is no agricultural activity in the project site. The villages are Kattupalli, Puzhuthivakkam, Vayalur and Kalanji covering an area of nearly 5569 acres. The site is closer to Athipattu village which is 8 km away. There are no pukka approach roads to and within the proposed site. There are some salt pans in the banks of Buckingham canal. These pans are leased out by Salt Commissioner, Government of India to private owners. Besides salt pans there are few private aqua farms near the project site.
- The soil salinity in the coastal tract is due to mainly chlorides, bicarbonates of sodium, calcium, potassium and magnesium. The factors responsible for the increase of salinity are due to influence of back water and lack of drainage in the area. The soils were found to be deficient in Nitrogen and Posphorous. Due to the intrusion of salinity in many of the surrounding villages ground water extraction for irrigation is not recommended.

- Though ground water table is very close and yield is also high, the area is mostly restricted for ground water extraction, due to intrusion of sea water into the ground water table. In general ground water table is available at

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2m depth and goes down in 20m in summer. In the TIDCO's proposed Petrochemical Park some of the project proponents plan to draw water from the Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB), whereas others have proposals to use sea water after desalination for their process and other needs.

- At present Approach roads upto the New North Madras Thermal Power Plant in Athipattu are available. From there the roads have to be built to the proposed site which is about 6-8 km towards North East. The Athipattu road branches off from the Manali-Minjur main road on the eastern side nearly at a distance of 4 km.
- At present, railway siding branches off from the Athipattu railway station to the New North Madras Thermal Power Plant. This can be advantageously extended to the proposed Petrochemical Park site for transporting raw materials and products. Already new Ennore Port has started making the railway line.
- New Ennore Part now being developed along the Bay of Bengal for import of coal for the NNMTPP can be advantageously used by the proposed units of the Petrochemical Park in future. This port site is very close to the proposed project site.

- Though there are number of petrochemical units planned for development in the coming 10 years (two phases of 5 years each), the following three project proponents have given their plans in the Petrochemical Park.

(i) Tamil Nadu Petro Products Limited (TNPP)
(ii) Hydro S & S Industries Limited (Hydro S & S)
(iii) Van Ommeren Mac Tank Terminals Limited (VOMAC)

(i) Tamil Nadu Petroproducts Limited have proposals to put up a refinery of 6 MMTPA at a total estimated cost of Rs.4,200 crores. The daily consumption of crude oil is about 17,435 T which is to be imported from Gulf countries. The chemicals used in the manufacturing process are caustic soda, butyl mercaptons, hydrochloric acid, diethyl/triethyl amine, etc. The transportation is by railway tankers/road tankers. Inside, within the plant, transportation is through pipelines. The total quantity of water required is 22,500 m^3/day for plant operation and 2250 m^3/day for the township. For cooling purposes 4,95,000 m^3/day of sea water is required. The treated sewage will be used for the green belt development. It is proposed to maximize use of treated waster water for green belt development. Thus, except the cooling water (sea water) being let out back into the sea,

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there will be no discharge of waste water from the plant. There will be practically no solid waste generation except the sludge from effluent treatment plant. The sludge from the crude oil storage tanks, will be collected once in 4-5 years and incinerated. The sludge from the ETP will be disposed of as land fill. The quantity of fuel oil used for burning and power generation of CPP is 50T/hr.

(ii) Van Ommeren Mac Tank Terminals Limited (VOMAC) – is Port based with independent tank storage terminal to handle hazardous liquid chemicals/gas, petroleum gas and non-hazardous chemicals. The proposed terminal has to handle variety of liquid cargo to cater to a number of liquid chemicals with parcel sizes varying from 2500 T to 40500 T. The storages are classified on the basis of (a) non-hazardous chemicals, (b) hazardous and class A, B and C chemicals, (c) class A, B petroleum products, (d) class-C petroleum products, and (e) pressurised storage for gases. In case of each group the tanks are planned to be built catering to specific chemicals which needs specialised requirments such as internal floating roof, nitrogen blanketing, etc. Optimisation is achieved by using common transfer facilities wherever chemicals re compatible. Where common lines are used batching pigs, pig launchers/receivers, hop lines, etc. are used to clean up the pipelines to minimise the intermixing of chemicals, prior to pumping of the chemical to the dedicated on-share storage. The total water requirement will be 77 m^3/day and 4 m^3/day for the plant and green belt development respectively. It s proposed to draw the water from Madras Metropolitan Water Supply and Sewage Board (MMWSSB) and treated sewage will be used for green belt development. The process effluents generated 77m^3/day) at the site will be collected in a receiving tank. The effluent will be neutralised in an equalisation tank. The effluent generated from petroleum products storage tanks will be skimmed in a oil water separator. The skimmed residue will be directed to an oil collection unit for recycling. The remaining effluent consisting mainly of organics and some suspended solids will be disposed off in an incinerator. The sewage effluent (4m^3/day) and washings from non-hazardous chemical storage tanks will be collected in a receiving tank. The effluent will be sent to a sedimentation/settling tank followed by an equalisation tank. BOD/COD removal will take place in a biological treatment unit such as a trickling filter. Minimal quantity of solid waste will be generated due to spills, cleaning of sludge deposits inside the tanks. The same will be disposed by incineration or by land fill.

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The emissions from the incinerators will be vented through No_x and HCI scrubbers, before letting out to the atmosphere.

(iii) M/s.Hydro S & S Industries Ltd. propose to set up a polyvinyl chloride resin manufacturing plant in the petrochemical park with a capacity of 1,50,000 T/yr. The raw material is vinyl chloride monomer (VCM) amounting to 1,50,000 T/yr. The raw material will be delivered by special cargo tankers to an LNG terminal to be built at New Ennore Port. The cargo (VCM) will be pumped along the pipelines to a storage tank and will be used in the manufacturing process. During the polymerisation reaction, which is exothermic, cold water is circulated around the reactor. After complete polymerization the charge is transferred to the stripping column feed tank for recovery of unreacted VCM. The recovered VCM is returned to recovered VCM tank for further use in polymerisation. The stripped slurry from the bottom is transferred to blend tanks. The blend tanks provide the slurry feed for the rotary drier. The dried slurry is sent to storage. The fines are scrubbed and recovered. The waste water is discharged for treatment and disposal. Water consumption for the process units will be 3000 mm^3/day. The amount of cooling water required depends on the technology employed, and they propose to use sea water of 36,000 mm^3/day. Fresh water cooling will also be considered. Alternatively closed cycle refrigeration might also be used which may not consume water daily but would consume power. Demineralisation of water by means of ion exchange will be done before using for the process. Unless recycled, all process and cooling water will not be discharged. If the waste water is treated and reused the amount of discharge water will be 1500 m^3T/day. The point of discharge of waste water is not yet finalised. The process itself does not generate any solid waste. PVC settled in the settling pits (treatment process) is not regarded as a solid waste but a salable product. Some wastes regarded as hazardous are generated and consist of packaging for process chemicals and filters. General wastes consist of paper bags, card board boxes gaskets, plastic bottles, filters, gloves, hoses, etc. Special wastes consist of waste oil, catalyst boxes, filters, iso-octane drums. Scrap metal consists of redundant plant equipment, off cuts and oil drums. The solid wastes will be disposed of through a licensed waste disposal operator or by incineration. Boiler house for generating steam by using gas and oil as back up generates atmospheric emissions. The process air emissions are vented out

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through a ventury scrubber attached to the drier stack. The vent gas absorber will efficiently handle the VCM emissions from the recovery plant. The proponents have plans to install mass spectrometer for area and stack monitoring of VCM emission. PVC dust emissions and stack monitoring will be done by manual methods.

- All these project proponents in the proposed Petrochemical Park have proposals to undertake extensive plantation of suitable trees to the soil and the area, along the periphery of the site and inside the plants. The green belt will reduce dust and other pollutants. As construction activities proceed, further, landscaping will be done and additional trees will be planted.

- Keeping in view the nature of activities envisaged at TIDCO and environmental guidelines of the Department of Environment, Government of India, an area of 10 Km radius around the proposed petrochemical complex was covered for the purpose of Environmental Impact Assessment Studies.
- The recorded data were used to determine predominant meteorological conditions which are useful in characterising baseline air quality status and in prediction of impacts on air environment. The long term meteorological data and temperature profile measuring using Radiosonde Experiments were collected from IMD, for air quality modelling.

- The meteorological data collected during air quality monitoring is used for interpretation of baseline status and to simulate the meteorological conditions for prediction of impacts. The baseline studies for air environment were carried out through reconnaissance survey followed by air quality monitoring programme and micro-meteorological study.

- A temporary laboratory was set up nearer to project site at Athipattu for chemical analysis of air samples. The micro-meteorological data like wind speed, wind direction, temperature and relative humidity were collected for the study period through a weather station. The weather station was installed at the site keeping in view, the free exposure of sensors to atmosphere with minimum interference from nearby structures. The design details of the proposed industrial units in the complex and other relevant information were collected to compute the atmospheric emissions. The micro-meteorological conditions at the proposed project site will regulate the transport and diffusion of air pollutants released into the

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atmosphere.

- It is expected that with the proposed activity of petrochemical complex SO_2 will be much less than 80 ug/m^3 (limit prescribed by CPCB) and will not affect the surrounding. However, it is proposed that necessary precautions should be undertaken for the accidental releases.

- Sound is generated by many activities associated with industrial development including each stage of site clearance, construction and operation of installations. Noise level measurements were carried out in and around project site. Noise levels were measured using a Portable Noise Level meter. Prediction of noise levels after the implementation of the Petrochemical Park was carried out using mathematical modelling exercise.

- Noise level assessment around the proposed Petrochemical Park site has been carried out with the objective of assessing the impact of total noise generated in the site, on its workers and on human settlements within 10 km. Radius from the plant site.

- Taking into consideration the expected noise sources in the Petrochemical Park, the expected noise level at a distance of 1 km will be in the range of 45-50 dBA which is within the recommended community noise exposure limit prescribed by CPCB.

- Information on water resources (ground/surface) was collected. Expected water requirement in the Petrochemical Park and sources of waste water and domestic wastes were collected.

- It is seen from the results of analysis of water samples for physical, inorganic and organic parameter and heavy metal concentration that there is sea water intrusion in the Buckingham canal. It is also found that chemical quality of ground water from 10 villages is within the limits of CPHEEO standards for drinking water. The water at Athipattu, Vallur and Velambakkam villages have excess hardness while the water at nandiyambakkam, Kattoor and Thathamanji have excess dissolved solids. Heavy metal concentration are within the limits of CPHEEO standards of drinking water quality. The bacteriological analysis shows that the water samples are contaminated with faecal coliform and faecal streptococci in varying proportions.

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- It is predicted that the discharge of cooling water and effluent from the industries will have sufficient dilution with sea water and the quality of sea water will not have any adverse effect. The travel of treated effluent will be from west to east.

- Field surveys were conducted to identify the land use/ land cover areas in the periphery and within 10 km. Around the project. Villages situated in different directions and distances from the project were selected for characterisation of the Land Environment in detail. Standard procedures were followed for soil sampling and analysis. Data on the land use pattern and animal population were collected from the concerned State Departments.

- It is worthwhile to dispose of the treated solid wastes and sludges generated from the Petrochemical Park in the proposed hazardous waste disposal facility being planned by Tamil Nadu Pollution Control Board at Manellur in Ponneri taluk.

- Exchangeable sodium is the predominant cation in samples. Some samples have high calcium exchange to cation. The exchangeable sodium percentage (ESP) levels in all the soil samples are very high. When the ESP level of normal clay loam or finer soil exceeds 15, the soil acquires undesirable physical status and it becomes hard when it is dry and sticky when it is wet and exhibits poor workability. Even if the clay is disposed on account of high ESP the impact on soil workability, hardness or stickiness would be adequately concentrated by high proportion of coarse sand. The soil samples are rich in organic carbon. The samples have high potassium values, but deficient in nitrogen.

- Water samples were also collected from surface water and ocean bodies for estimation of biological parameters. For zooplankton estimation, water samples were concentrated by passing through plankton net at the sampling point itself and the concentrate was preserved in formalin. For the estimation of phytoplankton, water sample was collected and preserved immediately in Lugol's iodine solution. These samples were subjected to detailed microscopic examination. Baseline biological status in terms of phytoplankton and zooplanktonw ere also analysed for the different water sources. The flora and fauna present in the study are enumerated in detail.

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- The climate is typically coastal and the hottest period is between April and July. The average rainfall is 1150 mm. The soil in the project area is red loamy and sandy loam. There is no reserved forests in the project area.

- Data on socio-economic environment was collected through personal interviews of the respondents, from census 1991 reports and Village Administrative officers in Ponneri taluk in the project study area.

- Educational facilities are not well provided in all villages except at Minjur and Ennore. All the villages have primary schools. But there is no school at Puzuthivakkam and Ebrahampuram (which is a salt pan area where aqua culture farms are established). In these two villages there are no houses and no habitation. Ennore and Minjur have enough water supply. But, most of the villages have no water supply and people have to get water from places 1 km. Away from their villages. Medical facilities are provided in Minjur and Ennore. They have Public Health Centre as well as private practitioners. At the same time there are no medical facilities available in Kattupalli, Kalanji and Kattur villages. Most of the villages do not have even private hospitals. Bus transport is also not available in most of the villages. Based on the data collection, the baseline Quality of Life Index (QOL) is computed for the project area and the value is 0.5026 indicating that there is lot of scope for improving the quality of life of the people in the region.

- There is great deficit of petroleum and petrochemical products in India and the proposed Petrochemical Park within 6 MMTPA capacity refinery and many petrochemical plants will lead to reducing the product deficit and savings in foreign exchange. A project of such magnitude would also elevate the economic status of local population due to increased job opportunities and development of ancillary industries.

- On the basis of socio-economic survey, it is envisaged that provision of basic facilities/amenities viz., employment, transportation, sanitation, medical facilities, water supply, education, recreation, fuel, etc. would result in improvement in the quality of life.

- Impact on the total project would be marginal in the sectors viz., biological environment, water, air, land and noise, aesthetics, components of the environment. However, gross improvement in the aspects of human

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interest is envisaged. Large beneficial impacts are due to the proposed Petrochemical Park welfare activities and adoption of EMP. Air, water and land environment would be kept well within acceptable limits.

- The proposed Petrochemical Park will result in establishment of downstream small scale industries, thus offering employment opportunities to the local people. This will effectively improve the standard of living of the people in nearby areas.
- In order to mitigate the impacts due to proposed Petrochemical Park operations on the various environmental components, certain measures are recommended with reference to air environment, noise environment, water environment, land environment, biological environment and socio-economic environment.
- A separate environmental management cell comprising experienced and qualified personnel reporting to the Chief Executive for smooth performance and monitoring of environmental protection equipment/measures should be created.
- A dedicated pollution monitoring cell should be set up for analytical testing of various environmental quality parameters of effluents, ambient air, stack emissions, noise levels, etc.

11. The main focus in the public interest litigation is that the proposal of setting up a Petrochemical Park of an extent of 7155.95 acres in the impugned lands which spread over in 4 villages, (i) Pulidivakkam; (ii) Kattupalli; (iii) Kalangi; and (iv) Voyalur II, would endanger the Pulicat Lake and the Pulicat Bird Sanctuary. That apart, the locality in question having already suffered from environmental hazards due to the industrialization around the area, the proposal would cause damage to the environmental resources such as, sand-dunes, small mangroves along the canals, sea grasses, marsh plant, tropical dry evergreen forests, beach, fresh and brackish water and cultivated vegetation. On the western margin of the island, patches of Avicennia marine (mangroves) are also present, and ecological and economic importance of mangrove resources needs to be emphasised as mangroves, like other marine resources, have direct as well as indirect economic value. In the island nearly 50% of the species of plants are of diverse medicinal value and some of them are Boerhavia diffusa, Caesalpinia bonduc, Crateva adansonii, Drosera burmannii, Gloriso superba, Indigofera aspalathoides, Santalum album, Tinospora cordifolia and Tylophora indica. The project would cause biological disaster to the Pulicat Bird Sanctuary and damage the entire eco-system on account of the hazardous effluent, destroying the very habitats and spawning grounds of fishes.

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12.1. But, it is seen from the counter affidavit that environmental impact evaluation has been accomplished through the use of functional relationship according to Battele Environmental Evaluation System (BEES) and the impact of the total project on the various Environmental Components like Air, Noise, Water Biology, Land and Aesthetics would be marginal. The existence of sand dunes and small mangroves along the canal, sea grasses and marsh plants and tropical dry green forestry, rare species of plants having diverse medicinal value are denied. However, assuming there are minor valuable environmental resources, gross improvement in the aspects of human interest is envisaged. Large scale beneficial impacts are due to adoption of EMP by the project proponents and the proposed welfare activities.

12.2. It is a settled law that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of "sustainable development". This is a development strategy that caters to the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environment-related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by strict adherence to sustainable development without which life of the coming generations will be in jeopardy. The adherence to sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to sustainable development cannot be singled out. Therefore, the concept of sustainable development is to be treated as an integral part of life under Article 21. Weighty concepts like intergenerational equity, public trust doctrine and precautionary principle, which have been declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development. To ensure sustainable development is one of the goals of the Environment (Protection) Act, 1986 and this is quite necessary to guarantee the right to life under Article 21. If the Act is not armed with the powers to ensure sustainable development, it will become a barren shell. In other words, sustainable development is one of the means to achieve the object and purpose of the Act as well as the protection of life under Article 21. Acknowledgment of this principle will breathe new life into our environmental jurisprudence and constitutional resolve. Sustainable development could be achieved only by strict compliance with the directions under the Act. The object and purpose of the

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Act: "to provide for the protection and improvement of environment" could only be achieved by ensuring strict compliance with its directions. The authorities concerned by exercising their powers under the Act will have to ensure the acquiescence of sustainable development. Therefore, the directions or conditions put forward by the Act need to be strictly complied with. Thus the power under the Act cannot be treated as a power simpliciter, but it is a power coupled with duty. It is the duty of the State to make sure the fulfilment of conditions or direction under the Act. Without strict compliance, right to environment under Article 21 could not be guaranteed and the purpose of the Act will also be defeated. The commitment to the conditions thereof is an obligation both under Article 21 and under the Act [vide N.D.Jayal v. Union of India, (2004) 9 SCC 362].

12.3. We should not forget that, when our country is emerging as one of the major power in the global arena, the question is, is it reasonable to postpone such a major project like the Petrochemical Park in the instant case. The impugned project is originally estimated at the cost of Rs.30,000 Crores in the year 2000. The same would provide direct employment opportunity for more than 10000 persons, who are Engineers, technicians and other field workers. That apart, additional and indirect job opportunity is also assured for nearly 25,000 persons.

12.4. The acquisition of the impugned land for the said project is, in our considered opinion, justified for the reasons that,

(i) out of the total 7155.95 acres required for the impugned project, 4302 acres of land belongs to the Government, but only the rest is proposed to be acquired, even out of which 2542 acres is dry land and 311 acres is wet land;

(ii) even though the project is proposed to be set up in such vast extent of land of 7155.95 Acres, a very bare minimal number of families, viz., 585 in number, residing in the impugned areas, would alone be required to change the place of habitation, viz., there is less liability of eviction;

(iii) further, these families would be taken care of under the Resettlement and Rehabilitation Package, as undertaken by the respondents in their counter affidavit;

(iv) the government have has already identified two sites for their rehabilitation;

(v) the location of the acquired land is approximately 35 Kms by road from Chennai and is well connected by road, rail, air and sea. The location is at 8 Kms from the nearest town of Minjur and 5 km from the nearest Railway station

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of Athipattu;

(vi) the project includes several development schemes, viz., Common area development and green belt, Roads, Bridges, Drainage System, Bunds, Service Corridors, Administrative Facilities, Fresh Water Supply, Sea Water Supply, Effluent disposal system, Railway Sidings, Power Supply Facilities, Street Lighting, Telecommunications, and Fire Fighting facilities;

(vii) the project includes several development schemes, viz., Common area development and reserving about 1200 acres of land for the green belt, besides Roads, Bridges, Drainage System, Bunds, Service Corridors, Administrative Facilities, Fresh Water Supply, Sea Water Supply, Effluent disposal system, Railway Sidings, Power Supply Facilities, Street Lighting, Telecommunications, and Fire Fighting facilities;

(viii) there is lot of scope for improving the quality of life of the people in the region.

(ix) A project of such magnitude would also elevate the economic status of local population due to increased job opportunities and development of ancillary industries.

(x) On the basis of socio-economic survey, it is envisaged that provision of basic facilities/amenities viz., employment, transportation, sanitation, medical facilities, water supply, education, recreation, fuel, etc. would result in improvement in the quality of life.

(xi) The proposed Petrochemical Park will result in establishment of downstream small scale industries, thus offering employment opportunities to the local people. This will effectively improve the standard of living of the people in nearby areas.

(xii) In order to mitigate the impacts due to proposed Petrochemical Park operations on the various environmental components, certain measures are recommended with reference to air environment, noise environment, water environment, land environment, biological environment and socio-economic environment.

(xiii) A separate environmental management cell comprising experienced and qualified personnel reporting to the Chief Executive for smooth performance and monitoring of environmental protection equipment/measures should be created.

(xiv) A dedicated pollution monitoring cell should be set up for analytical testing of various environmental quality parameters of effluents, ambient air, stack emissions, noise levels, etc.

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13. The Petrochemical Park is going to be remarkable one in the years to come so far as the use of Petrol, Diesel, fuel oil, etc. are concerned. Petrochemicals will have phenomenal increase by way of manufacture of different plastic, rubber materials, etc. discovery and extraction of oil and other natural gas in the eastern coast of southern region have given further thrust for the development of petrochemicals and other associated industries. Therefore, in order to achieve self-sufficiency in petrochemicals and to reduce the expenditure on foreign exchange in the production of petrochemicals, the impugned Petrochemical Park is planned. The Petrochemical Park would contribute a remarkable growth in the very economy of the country in the years to come.

14.1. We are therefore convinced that the objection to the proposed Petrochemical Park does not stand to the test of logic, rational approach, eco-environmental realities, socio-economic development, well-settled legal principles and is opposed to the concept of "Sustainable Development" as well as to the progress and prosperity of the nation.

14.2. For all these reasons, we are of the considered opinion that the Government, by exercising the power conferred under the Environment Act, shall take note of the findings and recommendations of the NEERI while issuing the environmental clearance for each and every activity proposed to be undertaken by the respondents to set up the Petrochemical Park, before commencing the activities. The conditions and directions of the environmental clearance to be issued by the Ministry of Environment and Forests, Government of India under the provisions of the Environment Act, shall scrupulously be adhered to, besides observing the conditions applicable for any such activities in CRZ-III, as notified by the Central Government. As suggested by NEERI, a separate environmental management cell shall be set up for smooth performance and monitoring of the environmental protection equipment/measures.

15. We shall now proceed to the question whether the impugned acquisition satisfies the pious wish of the statutory mandate for invoking the emergency, dispensing with the statutory enquiry by the State and stands to the test of executive competency of the State Government, under the provisions of the Constitution of India.

VIII -Issue (ii)

"Whether the impugned acquisition is bad for change of

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requisitioning body or any non compliance of the procedure contemplated under Section 4(1) or dispensation of enquiry contemplated under 5-A of the Act or suffers from executive competency of the State Government for want of due delegation under Article 258 of the Constitution of India?"

(A) EXECUTIVE COMPETENCY OF THE STATE GOVERNMENT

16. The first magnitude of the above issue is whether the State Government has jurisdiction to initiate the impugned acquisition proceedings without due delegation of powers by the Union of India as contemplated under Article 258 read with Article 73 of the Constitution of India, as the subject matter, viz., setting up of Petrochemical Park falls under Entry 53 of List I of VII Schedule of the Constitution of India.

17. The essential provisions which deal with the modus operandi as to the sharing of executive powers between the Central and State Governments, as sanctioned under the working system of the Constitution of India is provided under Articles 53, 73, 154, 162, 246 and 258 and Entry 53 of the List I of VII Schedule of the Constitution of India, which are extracted hereunder:

"53. Executive power of the Union.-

(1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall-

(a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or

(b) prevent Parliament from conferring by law functions on authorities other than the President.

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73. Extent of executive power of the Union.

(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend-

(a) To the matters with respect to which Parliament has power to make laws; and

(b) To the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

154. Executive power of State.

(1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Nothing in this article shall-

(a) Be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(b) Prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

162. Extent of executive power of State.

Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to

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make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

246. Subject-matter of laws made by Parliament and by the Legislatures of states:

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List")

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List")

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

258.Power of the Union to confer powers, etc., on States in certain cases.- (1) Notwithstanding anything in this Constitution, the President may, with the consent of the Governor of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the

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State or officers and authorities thereof.

(3) Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties."

"List I - Entry 53. Regulation and development of oil fields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable."

18. The main thrust of the submission made on behalf of the petitioners is that when the power to regulate and develop the petroleum and petroleum products falls within the legislative competency of the Union of India under Entry 53 of List I read with Article 246 of the Constitution of India, the State is not competent to initiate the impugned acquisition without a specific entrustment to do so by the Union of India to the State Government, as contemplated under Article 258 of the Constitution of India. It is contended that the impugned land acquisition proceedings initiated by the State Government for setting up Petrochemical Park which deals with petroleum products is without jurisdiction, unless such power is entrusted by the Union of India to the State Government as contemplated under Article 258 of the Constitution of India, because the power to regulate and develop petroleum and petroleum products falls within the legislative competency of the Union of India as per Entry 53 of List I and the corresponding executive powers are also vested with the Union of India in view of Article 73 of the Constitution of India. But, in our considered opinion, the argument is wholly based on misconceived reading of Articles 73, 154, 162, 246 and 258 of the Constitution of India. Harmoniously reading the above Articles leads to the conclusion that the executive power of the Union and States shall respectively extend to the matters in respect to which the Parliament or the State Legislatures has or have power to make laws.

19. It is a settled law that a modern State is certainly expected to engage in all activities necessary for the promotion of the social and economic welfare of the community. Neither of the Articles 162 and 73 contains any definition as to what the executive function is and what activities would legitimately come

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within its scope. They are concerned primarily with the distribution of the executive power between the Union on the one hand and the States on the other. They do not mean that it is only when Parliament or the State Legislature has legislated on certain items appertaining to their respective lists, that the Union or the State executive, as the case may be, can proceed to function in respect to them. On the other hand, the language of Article 162 clearly indicates that the powers of the State executive do extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already. The same principle underlies Article 73 of the Constitution. It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. The Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently, it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also, when so empowered, exercise judicial functions in a limited way. The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of Article 154 of the Constitution. But, as we have already stated, it does not follow from this that in order to enable the executive to function, there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws. Our Constitution, though federal in its structure, is modelled on the British parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the State, vide Ram Jawaya v. State of Punjab, AIR 1955 SC 549. The ratio laid down in Ram Jawaya case, cited supra, continues to hold good on the point [vide:(i) B.N.Nagarajan v. State of Mysore, AIR 1966 SC 1942, (ii) A.Sanjeevi Naidu v. State of Madras, 1970 (1) SCC 443, (iii) Naraindas Indurkhya v. State of M.P., 1974(4) SCC 788, (iv) Common Cause, a Regd.Society v. Union of India, 1996 (6) SCC 667, (v)

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U.N.R.Rao v. Indra Gandhi , 1997 (2) SCC 63, (vi) India Drugs & Pharmaceutical Limited v. Punjab Drugs Manufacturers' Assn., 1999 (6) SCC 247, (vii) Pu. Myllai Hlychho v. State of Mizoram, 2005 (2) SCC 92 and (viii) Satyanarain Shukla v. Union of India, 2006 (9) SCC 69]

20.1. Article 53 deals with the executive power of the Union. Article 73 deals with the extent of the executive power of the Union. Article 154 deals with executive power of the State. Article 162 deals with Extent of executive power of the State. Article 258 deals with power of the Union to confer powers on States. While Article 154 is analogous to Article 53, Article 162 is analogous to Article 73. Under Article 162 the State Government can take executive action in all the matters, where the legislature can pass laws.

20.2. As held in Ram Jawaya case, referred supra, it is not necessary that in order to enable the executive to function, there must be a law already in existence and that the powers of the executive are limited merely to carry out these laws. If that be so, the power to regulate and develop petroleum and petroleum products, which falls within the legislative competency of the Union of India under Entry 53 of List I, read with Article 246 of the Constitution of India, shall not, in any way, be a ground to question the executive competency of the State Government for the acquisition of the impugned lands, merely for the reason that in the absence of specific legislative power for such regulation in the State List, the State cannot acquire the lands invoking its field of legislation under Entry 42 of the Concurrent List, viz., for acquisition and requisitioning of property. The executive power of the State Government is therefore co-extensive with that of the power of the State Legislature in the matter of acquisition and requisitioning of the property, in view of Entry 42 of Concurrent List. Since the acquisition of the land falls under Entry 42 of List III and has nothing to do with the power to regulate under Entry 53 of List I, the argument advanced in this regard that the impugned acquisition vitiates for want of delegation of powers to the State Government under Article 258 of the Constitution of India is totally misconceived.

20.3. On the other hand, the impugned acquisition made under the Land acquisition Act is justified, taking recourse under Entry 42 of List III for acquisition and requisitioning of the property, read with Article 154, which deals with the executive power of the State, and Article 162 which deals with the extent of Executive power of the State. This leads to the focal point of controversy, whether the power of acquisition and requisitioning of property, either to legislate or to execute, which are traceable to Entry 42

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of List III is an independent power by itself or ancillary or incidental to any of the other legislative executive powers flowing from various entries in the three lists. To analyse this, we are constrained to traverse the Constitution amending process bearing on the three relevant entries relating to the acquisition and requisitioning of property by way of Constitution (Seventh Amendment) Act, 1956, which came into force on 1.11.1956. Prior to the Constitution (Seventh Amendment) Act, 1956, Entry 33 of List I read as follows, "Acquisition or requisitioning of property for the purpose of the Union". Similarly, Entry 36 in List II prior to the Constitution (Seventh Amendment) Act, 1956 read as follows: "Acquisition or requisitioning of property except for the purpose of the Union subject to the provisions of Entry 42 of List III". At that time, Entry 42 of List III read, viz., "Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the form and manner in which such compensation is to be given". But, by virtue of the Constitution Seventh Amendment Act, the three entries were repealed. Entry 33 in List I and Entry 36 in List II were deleted and a single comprehensive Entry 42 in List III was substituted to read : "Acquisition and requisitioning of property". The power to acquire property, therefore, could be exercised concurrently by the Union and the States.

20.4. Even if prior to the deletion of Entry 33 in List I and Entry 36 in List II, there could be a possibility for an argument that as power of acquisition of property was conferred both on Union and the States to be exercised either for the purpose of the Union or for the State, it was incidental to any other legislative power flowing from various entries in the three lists and not an independent power. But, since the deletion of Entry 33 in List I and Entry 36 in List II and substitution of a comprehensive Entry 42 in List III, referred to above, it could hardly be urged with confidence that the power of acquisition and requisitioning of property was incidental to other power. Therefore, we firmly conclude that it is an independent power provided for in a specific entry. The above view is strengthened by a decision of the Constitution Bench of the Apex Court in Ishwari Khetan Sugar Mills (publication) Ltd., State of U.P., 1980 (4) SCC 136.

20.5. Accordingly, both the Union and the State would have power of acquisition and requisitioning of property. This position is unquestionably established by the majority decision in Rustom Cavasjee Cooper v. Union of India, (1970) 1 SCC 248 @ 282 = AIR 1970 SC 564, where Shah, J., speaking for the majority of 10 Judges held as under:

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> "Power to legislate for acquisition of property is exercisable only under Entry 42 of List III, and not as an incident of the power to legislate in respect of a specific head of legislation in any of the three lists."

20.6. Of course, this position would lead to a complication, viz., if power of acquisition is treated as an independent power both of the Union and the State and could be exercised by the Union and the State with respect to the same property it would lead to such a confusion that there would be no end to it. A picture of fearful constitutional impasse was drawn in State of West Bengal v. Union of India, AIR 1963 SC 1241. In that case, the State of West Bengal filed a suit against the Union of India challenging the constitutional validity of the Coal Bearing Areas (Acquisition and Development) Act, 1957, on the ground that the Act to the extent it applied to the land vested in or owned by the State was beyond legislative competence of Parliament. But, such wild apprehension stands effectively answered in the State of West Bengal case, referred supra, holding that such merry-go-round needs to be averted by harmonious construction and reconciliation of powers between the Union and the States. Even though the power to acquisition and requisitioning of property, may since the amendment be exercised concurrently by the Union and the States, Article 254 negatives the possibility of such conflicts by the seal of the assent by the President to the State legislations. Thus, the power of acquisition and requisitioning of property in Entry 42 of List III and the corresponding executive powers, are to be held independent, but not incidental to any other entries in the three lists. The contention that the power to regulate petroleum and petroleum products, as provided under Entry 53 of List I, would make the acquisition of the land impossible is liable to be rejected.

20.7. In substance, the State Government proposed to acquire the lands for setting up a Petrochemical Park, and such power of acquisition of property falls under Entry 42 of List III (Concurrent List), viz., "acquisition and requisitioning of property" is independent; but not incidental to the power to regulate petroleum and petroleum products under Entry 53 of List I (Union List). We therefore overrule the contention of the petitioners that unless there is specific entrustment by the Union of India to the State Government under Article 258 of the Constitution of India for the impugned acquisition, the impugned acquisition is without jurisdiction.

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(B) PROCEDURAL COMPLIANCE OF SECTION 4(1) OF THE ACT

21.1. We shall next examine the arguments made on behalf of the petitioners as to the non-compliance of the procedure contemplated under section 4(1) of the Act.

21.2. Placing reliance on the decision of S.B.Majmudar,J. in Municipal Corpn. of Greater Bombay v. Industrial Development Investment Co. (P) Ltd., (1996) 11 SCC 501 that change of land user for another purpose should be specifically indicated in the plan and only thereafter a fresh proposal should be issued for acquisition proceedings, the learned counsel for the petitioners contend that the change of requisitioning body in the instant case from SIPCOT to TIDCO and the continuation of the acquisition proceedings based on G.O.Ms.No.85, Industries (MID-II) Department, dated 21.3.1997 whereunder the Government accorded permission to the SIPCOT, but not to the TIDCO, without issuing a fresh notification as to the change of land user, vitiates the impugned acquisition.

21.3. But, we are unable to appreciate the said argument for the reasons that, in the instant case, even though the Government originally accorded sanction to SIPCOT to acquire the impugned land as a requisitioning body for setting up a Petrochemical Park and later on changed the requisitioning body from SIPCOT to TIDCO, taking into consideration the successful execution of the projects like, Jayamkondam Lignite Power Corporation, Hi.Tech Park etc., the purpose for acquisition remains the same, viz., for setting up the Petrochemical Park and also accorded a fresh permission in favour of TIDCO for executing the work in G.O.Ms.85A, dated 25.5.1997. That apart, both SIPCOT and TIDCO are State owned corporations and the purpose of acquisition remains the same. Hence, there is no need to confuse ourselves on account of the change of requisitioning body. Therefore, the decision of S.B.Majmudar,J. in Municipal Corpn. of Greater Bombay v. Industrial Development Investment Co. (P) Ltd will not be helpful to the case of the petitioners.

21.4. What is required is clarity in thinking process as to the purpose for which the impugned lands are sought to be acquired. As long as the public purpose for which the impugned lands are acquired remains the same, the change of requisitioning body, as in the instant case, shall not lead to any confusion which would land in miscarriage of justice and avoidable frustration of public purpose. Only one exception in this regard should be kept in mind, viz., whether the public purpose envisaged under G.O.Ms.No.85, Industries (MID-II) Department, dated 21.3.1997, remains to be the same or not while according permission in favour of TIDCO in G.O.Ms.No.85A dated 25.5.1997. Once there is no doubt about the

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proposed usage of the impugned land for public purpose, in our considered opinion, the change of requisitioning body would not, in any way, vitiate the the impugned acquisition proceedings.

21.5. A Bench of Three Judges of the Apex Court in Gulam Mustafa v. State of Maharashtra, 1976 (1) SCC 800, held that once the original acquisition is valid and title has vested in the Municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands void merely because, long later, the requiring authority diverts it to a public purpose other than the one stated in the Section 6(3) declaration.

21.6. The same view was also reiterated by another Bench of three Judges of Apex Court in Mangal Oram v. State of Orissa, (1977) 2 SCC 46 wherein it was held that use of land after a valid acquisition for a different public purpose will not invalidate the acquisition.

21.7. In State of Maharashtra v. Mahadeo Deoman Rai, (1990) 3 SCC 579, yet another Bench of three Judges of Apex Court had held that requirement of public purpose may change from time to time but the change will not vitiate the acquisition proceeding. The authority concerned should review the requirement aspect periodically in the prevailing social context.

21.8. Similarly, in Collectors of 24 Parganas v. Lalit Mohan Mullick, (1986) 2 SCC 138, a Bench of two Judges of the Apex Court had held that acquisition of the land for a public purpose, namely, the use of the land for rehabilitation of displaced persons, should be altered by subsequent development for another public purpose, namely, for construction of a hospital as per Development and Planning Act.

21.9. In Ram Lal Sethi v. State of Haryana, 1990 Supp SCC 11 the land was acquired for public purpose of construction of road but exigencies of development necessitated allotment of a portion of it to a private company; the allottee company was in possession for 17 years and was not made a party to the litigation; allotment was not shown to be an act of favouritism. It was held that the acquisition was not vitiated on account of change of the user.

21.10. It is therefore, well-settled legal position that the land acquired for a public purpose may be used for another public purpose on account of change or surplus thereof. The acquisition

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validly made does not become invalid by change of the user or change of the user in the Scheme as per the approved plan. Therefore, in our considered opinion, want of revised notification notifying the change of requisitioning body from SIPCOT to TIDCO will not vitiate the impugned acquisition proceedings.

21.11. What is, therefore, basically relevant to be seen is whether the acquisition proceedings is valid in law, but for the change of requisitioning body or even as the public purpose. If the impugned acquisition proceedings are sustainable, but for the change of the user or the public purpose, the mere change of requisitioning body much less the change of usage shall not vitiate the impugned acquisition proceedings.

21.12. Hence, we are constrained to test, whether, but for the change of requisitioning body, much less the usage, the impugned acquisition firstly satisfies the procedure contemplated under Section 4(1) of the Act?

22.1. Where it appears for appropriate Government that land in any locality is needed or is likely to be needed for a public purpose, a notification to that effect shall be published not only in official gazette but also in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the substance of such public notice shall also be caused at the convenient place in the said locality, as contemplated under section 4(1) of the Act.

22.2. An explanation inserted to Section 4 by the Land Acquisition (Tamil Nadu Amendment) Act, 1996 reads as follows:

> "Explanation.- For the purpose of this sub-section, the publication of notification in the Official Gazette, the publication of such notification in two daily newspapers and the giving of a public notice.-
>
> (a) may precede each other;
>
> (b) shall be completed within a period of sixty days. The period of sixty days shall be reckoned from the date of publication of notification in the Official Gazette or the date of publication of such notification in two daily newspapers or the date of giving public notice, whichever is earlier."

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22.3. Therefore, three modes of publication, viz., notification by gazette; notification by two daily newspapers; and public notice in the locality, including by beat of tom tom, should be made within sixty days. In the instant case, it is not in dispute that all the above three modes of publication are complied with within sixty days as contemplated in each and every case. The above procedure contemplated under Section 4(1) of the Act read with the explanation of the Tamil Nadu State is mandatory. Any non compliance of either of the publications will vitiate the acquisition proceedings.

22.4. In the instant case, the respondents stated in their respective counter affidavit that in each and every case of acquisition, all three modes of publication have been complied with as contemplated under Section 4(1) of the Act read with the explanation. We are also satisfied with the above, on the basis of the relevant files produced before us.

22.5. But, what all the petitioners contend is that the publication of the notification was made in two dailies, which do not have wide circulation in the locality.

22.6. Of course reliance was placed by the petitioners in this regard on a decision of the Division Bench of this Court dated 8.11.2001 made in W.A.No.1536 and 1554 of 2001 (The State of Tamil Nadu through its Secretary, Adi Dravidar and Tribal Welfare, Chennai vs. Kailasa Nambiar) whereunder it was held as under:

> "Common question arises regarding the validity of the publication of Section 4(1) notification in "Kumari Murasu" and "Kinnus" newspapers. Both are Tamil dailies. These two newspapers, indisputably are not having wide circulation and have got very limited circulation. That apart, one of the newspaper should be preferably in English while the other should be compulsorily in the Regional Language. If that be so, the publication of Section 4(1) notification in two Tamil dailies, not having wide circulation, does not conform to the requirement of law. The legal imposition of publication in two daily newspapers is mandatory, for the reason that they should be made known to the general public, so that they have knowledge of the intended acquisition and then put for their objections, if they so wish. This being the object and intendment, it cannot be scuttled by publishing the same in the newspapers, which are very insignificant, and not having wide circulation. In fact, this requirement of publication in newspapers was not there

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before the amending Act of 1984. Because of the experience in working of the provisions and the complaints of the public, particularly of the persons interested and affected, of having no knowledge of the acquisition, the Parliament has thought it fit to incorporate the provisions, making it mandatory to publish Section 4(1) notification not only in the gazette and locality, but also in two prominent daily newspapers, one out of which should be in vernacular of that area. We had already dealt with this proposition in the case of Krishnan.V v. Government of Tamil Nadu (2001 (4) CDTC 108), which is also to the same effect that paper publication should be made, one in English daily and another in the Regional Language of wide circulation. We have perused the judgments in RAMIAH MOOPANAR v. STATE OF TAMIL NADU (2000 (1) CTC 117) and CHELLADURAI,N. v. GOVERNMENT OF TAMIL NADU (2000 (III) CTC 215). We approve the view taken by the learned single Judge in those cases. A Division Bench judgment of this Court was brought to our notice rendered in W.A.No.673 of 2001, dated 10.4.2001. But the said judgment did not lay down any legal principles. In fact the judgments rendered by the learned Single Judge, referred to supra, have been mentioned before the said Division Bench. But, the Division Bench has dismissed the Writ Appeal on the ground of laches, as the award was passed long back. In the circumstances, we uphold the order of the learned single Judge, and we hold that the paper publication made is erroneous and direct that the paper publication to be made in prominent daily newspapers, one in English and another in the Regional Language, i.e., Tamil, having wide circulation."

22.7. No doubt, the publication in the newspapers as well as the public notice in the locality should be made in an effective manner, or otherwise it would seriously affect the purport and intent of such publication, which was meant specifically for bringing to the notice of the local people in order to come forward with their say with regard to the acquisition sought to be made, and the purpose of effecting publication in the newspapers having circulation in the locality cannot be treated as a mere formality. There should be purposeful compliance of the provisions of Section 4(1) of the Act and it cannot be reduced to an empty formality. The requirement to cause publication in the newspapers is basic and fundamental and the statutory requirements cannot be compared with the requirement of giving personal notice to interested persons.

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22.8. But, in the instant case, the publication of the notifications were made apart from the Government Gazette also in Tamil dailies, viz., "Dina Bhoomi", "Malai Murasu", "Kathiravan", "Makkal Seithi", etc. and also by beat of tom tom in the locality. When the State strongly contends that these newspapers are being circulated in the locality, it may not be proper for this Court, while exercising the power of judicial review under Article 226 of of the Constitution of India, as the power under Article does not permit this Court to go into the factual disputes of the case, unless and otherwise the facts are indisputed, as in the case in W.A.No.1536 and 1554 of 2001 ((The State of Tamil Nadu through its Secretary, Adi Dravidar and Tribal Welfare, Chennai vs. Kailasa Nambiar), nor it is permissible for this Court to jump into the conclusion that the publication of the notification was not made in the newspaper having circulation in the locality, more so where the records produced before us disclose that it is otherwise and the public notice was also made by beat of tom tom.

22.9. We, therefore, hold that the impugned acquisition cannot be held to be vitiated for want of any compliance of all three modes of publication as contemplated in Section 4(1) of the Act, as such publication by all three modes is found to be correct on record.

(C) VAGUENESS

23. The other contention that the impugned acquisition proceedings vitiates on the ground of vagueness for having issued different notifications for the same acquisition do not weigh much, as different notifications were made for different lands owned by different persons, but the public purpose for which impugned land is sought to be acquired remains to be the same. Therefore, there is no vagueness as to the public purpose for which the impugned acquisition is sought for.

(D) JUSTIFICATION FOR INVOKING URGENCY AND DISPENSING WITH THE ENQUIRY UNDER SECTION 5A OF THE ACT

24. Whether the invocation of urgency clause under Section 17 (1) and dispensation of enquiry under Section 5A, by exercising the power conferred under Section 17(4) is justified under the facts and circumstances of the case, remains to be answered hereunder.

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25.1. It is trite law that a statute conferring power on the Government to compulsory acquire lands shall be strictly construed. We have already seen that the compliance of three modes of publication of the notification contemplated under Section 4(1) of the Act is mandatory in terms as observed above. Similarly, enquiry contemplated under Section 5A before issuing a declaration under Section 6 of the Act, to enable the land owners to submit their objections to the acquisition is also mandatory. Any dispensation of such enquiry should strictly satisfy the requirement contemplated under Section 17 of the Act, because the Rule of Law and the principles of natural justice have had its stamp in Section 5A of the Act.

25.3. The power to dispense with enquiry under Section 5A by the Government is traceable to Section 17 of the Act which provides a special power to the Government in the case of urgency and emergency. Section 17(1) empowers the appropriate Government to direct the Collector to take possession of any land needed for public purpose though no award has been made under Section 9 of the Act. Section 17(2) governs such emergency situation owing to any sudden change in channel of any navigable river or other unforeseen emergency mentioned thereunder. In either case referred to above, by invoking Section 17(4) of the Act, the appropriate Government may direct the provisions of Section 5A shall not apply and if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after the date of publication of the notification under Section 4(1) of the Act. For invoking Section 17 of the Act, the appropriate Government should decide that there is urgency or emergency to invoke Sections 17(1) and 17 (2). If the Government satisfies so and issues such directions, then the enquiry under Section 5A can be dispensed with and a declaration may be made under Section 6 after the publication of 4 (1) notification and possession can be taken.

25.4. A careful perusal of these provisions, of course, which is an exception to the normal mode of acquisition contemplated under the Act, shows a mere existence of urgency under Section 17 (1) or unforeseen emergency under Section 17(2), though is a condition precedent for invoking Section 17(4) of the Act, that by itself, is not sufficient to direct the dispensation of enquiry under Section 5A, unless or otherwise, the appropriate Government, in its opinion, form along with the existence of urgency and unforeseen emergency, there is a need for dispensing enquiry under Section 5A, which means, the appropriate Government must apply its mind before dispensing with the enquiry under Section 5A of the Act. In other words, mere existence of an urgency under Section 17(1) or unforeseen emergency under Section 17(2) will not by

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itself, be sufficient for dispensing with the enquiry under Section 5A of the Act.

25.5.1. This proposition leads to a situation, to what extent the Court can interfere when the State invokes either urgency clause or unforeseen emergency clause, viz., Sections 17(1) and 17 (2) respectively and dispenses with the enquiry under Section 5A of the Act? It is answered in a catena of decisions which are referred to hereunder.

25.5.2. Application of mind by the Government with regard to emergency should be looked into the files. However, the post decision delay is not a ground to question the land acquisition proceedings, State of U.P. v. Smt. Pista Devi and others, AIR 1986 SC 2025.

25.5.3. Very often the officials, due to apathy in implementation of the policy and programmes of the Government, themselves adopt dilatory tactics to create cause for the owner of the land to challenge the validity or legality of the exercise of the power to defeat the urgency existing on the date of decision revision under Section 17(4) of the Act to dispense with enquiry under Section 5A of the Act, Chemeli Singh & Others v. State of U.P. and another, 1996 (2) SCC 549, therefore, the lethargy on the part of the officials for pre or post notification delay in our considered opinion would not render the exercise of the power to invoke urgency clause invalid on that account.

25.5.4. The opinion of urgency formed by the appropriate Government to take immediate possession invoking urgency clause Section 17(1) read with Section 17(4) of the Act and dispensing with enquiry under Section 5A of the Act, is a subjective conclusion based on the material before it and it is entitled to great weight unless it is vitiated by mala fides or colourable exercise of power., vide. Chemeli Singh & Others v. State of U.P., 1996 (2) SCC 549.

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25.5.5. The Apex Court in Mohan Singh v. International Airport Authority of India, 1997 (9) SCC 132, where a question arose for consideration whether the compliance with the publication of notification in three steps required under Section 4(1) is mandatory while exercising the power of eminent domain under Section 4(1), when the appropriate Government exercising the power under Section 17(4) dispensing with the enquiry under Section 5A,

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it is held as follows:

> "27. In the light of the above law, we have no hesitation to hold that though compliance with publication of the three steps required under Section 4(1) is mandatory while exercising the power of eminent domain under Section 4(1), when the appropriate Government exercises the power under sub-section (4) of Section 17 dispensing with the enquiry under Section 5-A and directs the Collector to take possession of the land before making the award as the lands are needed urgently either under sub-section (1) or (2) thereof, it is not mandatory to publish the notification under Section 4(1) in the newspapers and giving of notice of the substance thereof in the locality; the last of the dates of publication should not be the date for the purpose exercising the power under Section 17(4). This interpretation of ours would subserve the public purpose and suppress mischief of non-compliance and seeks to elongate the public purpose, namely, taking immediate possession of the land needed for the public purpose, envisaged in the notification."

25.5.6. The question of urgency of an acquisition under Section 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the Court to make a scrutiny of the propriety of that satisfaction of an objective appraisal of facts, vide First Land acquisition Collector & Others v. Nirodhi Prakashu Gangoli & Anr., 2002 (4) SCC 160.

25.5.7. It is now settled legal position that decision on urgency is an administrative decision and is a matter of subjective satisfaction of the appropriate Government on the basis of the material available on record. Therefore, there was no need to pass any reasoned order to reach the conclusion that there is urgency so as to dispense with the enquiry under Section 5-A in exercise of power under Section 17(4), [vide Union of India v. Praveen Gupta, (1997) 9 SCC 78].

25.5.8. Whether in a given situation there existed grave urgency or not is left to the discretion and decision of the concerned authorities. It is true the Apex Court in Union of India v. Krishan Lal Arneja, (2004) 8 SCC 453, interpreting the power conferred under Section 17(4) for invoking the urgency clause under Section 17(1) and dispensing with the enquiry contemplated

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under Section 5A of the Act held as follows:

> "Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5-A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a landowner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Section 5-A of the Act. The authority may have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the landowners and the inquiry under Section 5-A of the Act could be completed. In other words, if power under Section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizens property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State administration."

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25.5.9. But, in the instant case, after careful perusal of the materials available on record, which are produced before us, we are satisfied that the Government while invoking the urgency clause under Section 17(1) have applied its mind and dispensed with the enquiry under Section 5A for more than one reasons, viz., (i) the Government decided to set up the Petrochemical Park, a major industrial project; (ii) the impugned lands are required urgently, because, if there is any delay in setting up such major industrial

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project in Tamil Nadu, the investment for such major industry would be invested in neighbouring States; and (iii) as a result, the policy of the Government to make the State of Tamil Nadu prosperous with the growth and development of industries would be defeated. Therefore, once the Government has satisfied with the urgent need of land to set up the major industrial project for the reasons that weighed them, as stated above, and arrived at a decision based on subjective satisfaction, as in other words, the very purpose for which the land is being acquired urgently would be frustrated and defeated for the delay that may be caused in the normal procedure.

25.5.10. In S.S.Darshan v. State of Karnataka, 1996 (7) SCC 203, where the invocation of urgency clause under Section 17 for acquisition of the land for public purpose of establishing information technology park, which is in fact a joint venture project involving three collaborates, Government of Karnataka being one of the collaborators acting through Karnataka Industrial Areas Development Board, as in the instant case TIDCO, came for a consideration, it was held that acquisition for the purpose of setting up the Technology Park invoking urgency clause was held justified. Therefore, we do not find any force in the argument advanced by the petitioners that there cannot be any public purpose nor urgency when the land is sought to be acquired for the impugned Petrochemical Park, a major industrial project sought to be executed by the Government through the TIDCO, the requisitioning body.

25.5.11. Even though it is held that the urgency clause cannot be invoked on the possibility of encroachers usurping the lands proposed to be acquired, the Apex Court in Om Prakash v. State of U.P., AIR 1998 SC 2504 laid out the principle that the acquisition of land for plant industrial development in Noida is nothing but emergent and the question of urgency is purely a subjective satisfaction of the Government and such urgency cannot be based on time bound scheme. In the instant case, the urgency clause was not invoked on the possibility of encroachers usurping the land but for just, valid and sound reasons based on the materials available on the file, referred to above. Hence, the reliance placed on the decision of Om Prakash v. State of U.P., referred supra, by the petitioners is misconceived.

25.5.12. The learned counsel appearing for the petitioners strongly places reliance on the decision of the Three Judges of the Apex Court in Union of India vs. Mukesh Hans, 2004 (8) SCC 14, whereunder it is held as follows:

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"A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows that mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4), that by itself is not sufficient to direct the dispensation of the Section 5-A inquiry. It requires an opinion to be formed by the Government concerned that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A inquiry which indicates that the legislature intended the appropriate Government to apply its mind before dispensing with Section 5-A inquiry.

....

It is possible in a given case the urgency noticed by the appropriate Government under Section 17(1) or the unforeseen emergency under Section 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry under Section 5-A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the Section 5-A inquiry is inherent in the two types of urgencies contemplated under Sections 17(1) and (2) of the Act.

....

An argument was sought to be advanced on behalf of the appellants that once the appropriate Government comes to the conclusion that there is an urgency or unforeseen emergency under Sections 17(1) and (2), the dispensation with inquiry under Section 5-A becomes automatic and the same can be done by a composite order meaning thereby that there is no need for the appropriate Government to separately apply its mind for any further emergency for dispensation with an inquiry under Section 5-A. We are unable to agree with the above argument because sub-section (4) of Section 17 itself indicates that the Government may direct that the provisions of Section 5-A shall not apply (emphasis supplied) which makes it clear that not in every case where the appropriate Government has come to the conclusion that there is urgency and under sub-section (1) or unforeseen emergency under sub-section (2) of Section 17, the Government will ipso facto have to direct the dispensation of the inquiry. For this we do find support from a judgment of this Court in the case of Nandeshwar Prasad v. State of U.P., AIR 1964 SC 1217, wherein considering the language of Section 17 of the Act which was then referable to waste or arable land and the

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U.P. Amendment to the said section, this Court held thus:

It will be seen that Section 17(1) gives power to the Government to direct the Collector, though no award has been made under Section 11, to take possession of any waste or arable land needed for public purpose and such land thereupon vests absolutely in the Government free from all encumbrances. If action is taken under Section 17(1), taking possession and vesting which are provided in Section 16 after the award under Section 11 are accelerated and can take place fifteen days after the publication of the notice under Section 9. Then comes Section 17(4) which provides that in case of any land to which the provisions of sub-section (1) are applicable, the Government may direct that the provisions of Section 5-A shall not apply and if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after the publication of the notification under Section 4(1). It will be seen that it is not necessary even where the Government makes a direction under Section 17(1) that it should also make a direction under Section 17(4). If the Government makes a direction only under Section 17(1) the procedure under Section 5-A would still have to be followed before a notification under Section 6 is issued, though after that procedure has been followed and a notification under Section 6 is issued the Collector gets the power to take possession of the land after the notice under Section 9 without waiting for the award and on such taking possession the land shall vest absolutely in Government free from all encumbrances. It is only when the Government also makes a declaration under Section 17(4) that it becomes unnecessary to take action under Section 5-A and make a report thereunder. It may be that generally where an order is made under Section 17(1), an order under Section 17(4) is also passed; but in law it is not necessary that this should be so. It will also be seen that under the Land Acquisition Act an order under Section 17(1) or Section 17(4) can only be passed with respect to waste or arable land and it cannot be passed with respect to land which is not waste or arable and on which buildings stand.(emphasis supplied)

A careful reading of the above judgment shows that this Court in the said Nandeshwar Prasad case has also held that there should be an application of mind to the facts of the case with special reference to this concession of Section 5-A inquiry under the Act.

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At this stage, it is relevant to notice that the limited right given to an owner/person interested under Section 5-A of the Act to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away for good and valid reason and within the limitations prescribed under Section 17(4) of the Act. The object and importance of Section 5-A inquiry was noticed by this Court in the case of Munshi Singh v. Union of India, 1973 (2) SCC 337 wherein this Court held thus:

> "7. Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. ... The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A"

It is clear from the above observation of this Court that right of representation and hearing contemplated under Section 5-A of the Act is a very valuable right of a person whose property is sought to be acquired and he should have appropriate and reasonable opportunity of persuading the authorities concerned that the acquisition of the property belonging to that person should not be made. Therefore, in our opinion, if the appropriate Government decides to take away this minimal right then its decision to do so must be based on materials on record to support the same and bearing in mind the object of Section 5-A."

25.5.13. In short, what all the learned counsel for the petitioners contends based on the decision on Union of India vs. Mukesh Hans, referred supra, is that the decision to invoke urgency clause under Section 17(1) by exercising the power conferred under Section 17(4), by itself is not sufficient for dispensation of enquiry contemplated under Section 5A of the Act, without a specific application of mind based on the materials placed before it to dispense with the said enquiry contemplated under Section 5A.

25.5.14. Placing reliance on Hindustan Petroleum Corpn Ltd., v. Darius Shapur Chenai, (2005) 7 SCC 627 it is contended that in the matter of acquisition of lands, where the Government is

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empowered with the decision making powers, based on its subjective satisfaction, the judicial review is permissible to test whether the Government has applied its mind. It is further contended that the mere averment in the counter affidavit stating that the Government has taken a decision to invoke urgency clause under Section 17(1) by exercising the power under Section 17(4) of the Act and dispense the enquiry contemplated under Section 5A of the Act would not by itself be sufficient compliance of law.

25.5.15. We are, therefore, constrained to peruse the relevant files carefully to satisfy ourselves whether the State Government, while invoking the urgency clause under Section 17(1) of the Act and dispensing the enquiry contemplated under Section 5A of the Act, by exercising the power conferred under Section 17(4) had applied its mind to the materials available on record. In all the cases, while taking the decision to invoke urgency clause under Section 17(1) of the Act for setting up the Petrochemical Park, the following certificate was issued in respect of publication of notification in the dailies as hereunder:

> "(1) to (3) .....
>
> (4) As the lands are urgently required for the Government accept the view that the acquisition is an urgent one and under Section 17(4) of the Land Acquisition Act, direct that the provision of the Section 5A of the said Act shall not apply to this case."

It is, therefore, evident from the materials available on record that the Government at the highest level has applied its mind both for invoking the urgency clause under Section 17(1) of the Act and also to dispense with the enquiry under Section 5A, by exercising the power conferred under Section 17(4) of the Act simultaneously.

25.6. Hence, we do not see any arbitrary and unreasonable exercise of power in invoking emergency clause as per section 17(1) of the Act and dispensing with the enquiry contemplated under section 5A of the Act by exercising the power conferred under section 17(4) of the Act, nor the delay in passing the declaration under Section 6 of the Act.

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(E) DELAY IN PASSING THE DECLARATION UNDER SECTION 6 – WHETHER FATAL?

25.7. Next, it is contended that the impugned acquisition proceedings vitiate in passing the declaration under Section 6 of

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the Act, which has not been made even after 4 months after the notification under Section 4 of the Act, but in State of U.P. v. Smt. Pista Devi and others, AIR 1986 SC 2025 the Apex Court held that post notification delay of merely one year was not by itself sufficient to render the decision of the Government under Section 17(1) and 17(4) at the time of issue of notification under Section 4(1) was either improper or illegal. In this regard, it is also apt to extract a passage of Justice Chinnappa Reddy, speaking for the High Court of Andhra Pradesh in Kasireddy Papaiah (died) v. Government of A.P., AIR 1975 AP 269:

> ".. one can never venture to say that the invocation of the emergency provisions of the Land Acquisition Act for providing house sites for Harijans is bad merely because the officials entrusted with the task of taking further action in the matter are negligent or tardy in the discharge of their duties, unless, of course, it can be established that the acquisition itself is made with an oblique motive. The urgent pressures of history are not to be undone by the inaction of the bureaucracy."

The observation made in the above decision of Justice Chinnappa Reddy, is quoted with approval of the Apex Court in Deepak Pahwa v. Lt.Governor of Delhi, AIR 1984 SC 1721 and in State of U.P. V. Pista Devi & others, referred supra.

25.8. Again, where there was a delay of nine months between dates of notification under Section 4(1) and declaration under Section 6, the Apex Court in A.P. Sareen v. State of U.P., (1997) 9 SCC 359, held that such delay of nine months does not effect the urgency, as the need for urgency is dissipated by the bureaucratic inadvertence and merely by such inadvertence the urgency does not cease. The urgency continues as long as the scheme is not initiated, action taken and the process completed.

25.9. Hence, we are convinced that the delay of 4 months from the date of the notification under Section 4(1) of the Act in passing the declaration under Section 6 of the Act is not fatal to the impugned acquisition proceedings.

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(F) VIOLATION OF ARTICLES 14, 19(1)(g) AND 21 OF THE CONSTITUTION OF INDIA

26. Lastly, the contention that the impugned acquisition would deprive the livelihood of the small agriculturists, who depend on the agriculture income from and out of the lands sought to be acquired and the fishermen community who reside in the locality permanently, is equally not tenable in law, as it is well settled

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in law that in a lis between eminent domain and right to livelihood, the compulsory acquisition by the State for public purpose in exercise of its powers of eminent domain does not amount to deprivation of right to livelihood. Therefore, the contention that the impugned acquisition violates Articles 14, 19 (1)(g) and 21 of the Constitution of India is devoid of merits.

27. Hence, we do not see any infirmity in the impugned acquisition proceedings on merits, or any violation in law and the issue No.(ii) is answered accordingly.

28.1. While recalling the fate of the Petrochemical Park all these years, we are reminded with a Poem, "The Rime of the Ancient Mariner", written by Samuel Taylor Coleridge, in the following words,

"Day after day, day after day,
We stuck, nor breath, nor motion;
As idle as painted ship
upon a painted ocean"

28.2. The magnificent project chalked out in the year 1997, initiated in action in 1998, got marooned due to legal cyclone and baffled the economy of the State extensively. Due to the unhappy state of affairs in which the impugned project has got stranded, we are afraid that, not only the estimated cost escalated due to passage of time, but the related economic growth and social development also got deeply imbedded in the mire of litigations. How the irreparable loss is to be compensated? Is it not the time to agnize this 'trauma', as a lesson for the future?

28.3. Now the curtain has been lifted; hurdles have been removed. An active and sustained involvement of the civil society is also necessary, as the 'core' obligation, for tackling the socio-economic-cum-eco-environmental issues. The empowering dimension of "sustainable development" is the need of the hour in sustaining economic-pollution-free governance. May the "Petrochemical Park" - not a mere painted ship hanging on the wall, but the one got delivered out of the mire of litigations, perform its voyage for a "Sustainable Development". May the State of Tamil Nadu become the Top among the States, and this Great India glow into a Major Power, in the global arena, in the very near future.

IX - CONCLUSION

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In the result,

(i) the proposal of setting up the Petrochemical Park shall be subject to the environmental clearance by the Union of India under the provisions of the environment (Protection) Act, 1986 and the Union of India shall take note of the findings and recommendations of the NEERI and also the concept of sustainable development, applying the yardstick of (i) Precautionary Principle; and (ii) Polluter Pays Principle, while issuing the environmental clearance for each and every activity proposed to be undertaken by the respondents to set up the Petrochemical Park, well before commencing such activities, imposing necessary conditions and directions and the same shall scrupulously be adhered to, besides observing the conditions applicable for any such activities in CRZ-III, as notified by the Central Government, and to set up a separate environmental management cell, to monitor the environmental protection equipment/ measures, for protection and development of the eco-environment in the location ensuring 'Sustainable Development'.

(ii) we do not see any violation to the constitutional mandates much less, the provisions of the Land Acquisition Act, nor arbitrary and unreasonable exercise of powers by the authorities concerned nor any violation to Articles 14, 19(1)(g) and 21 of the Constitution of India; and

(iii) hence, the writ petitions stand dismissed, vacating all legal hurdles in executing the magnificent, major industrial project, viz., Petrochemical Park.

सत्यमेव जयते

Sd/-
Asst. Registrar.

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/true copy/

Sub Asst. Registrar.

Sasi/Kpl/na

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To

1. The Commissioner and secretary
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2. The Special Tahsildar,
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4. The Managing Director,
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7. The Secretary
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8. Union of India, represented by
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9. The Commissioner Department of Fisheries
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10. The Chairman,
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11. The Managing Director,
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3 ccs to M/s. King and Partridge, Sr.Nos.13150, 13149 and 13148

5 ccs to Mr.J.R.K. Bhavanantham, Advocate, sr. 12972, 12976, 12974, 12975, 12977

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1 cc to MRs.T. Kokilavane, Advocate, sr. 13233
1 cc to Mr.P. Wilson, Asst. Solicitor, General of India, Sr. 13074
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1 cc to M/s. Ram and Rajan, Associates, Sr. 13582
1 cc to the Government Pleader, High Court, Madras, 104. Sr. 13470
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W.P.No.17195 of 1998, etc. Batch

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